

THE ARCHITECT'S LAW MANUAL

BY

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(OF THE NEW YORK AND FEDERAL BARS)

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TO MY FRIEND
REGINALD LINDSEY SWEET
WHOSE WORK JUSTIFIES MY CONTENTION
THAT A TRUE ARTIST MAY BE
A CAPABLE BUSINESS MAN

PREFACE

The present work is based in large measure upon the series of articles published in *The American Architect* in 1921 and 1922, under the title of "Architectural Quicksands" and upon the additional discussions of the problems of the architect which have since appeared in the Legal Department of that publication.

It is presented in response to the many requests which I have received that the subject matter of these articles and discussions be presented in book form and that the special forms of contract between architect and client to which I have from time to time referred in my writings be made generally available to the profession.

In placing this material in book form, it has been completely revised and brought down to date and much new matter has been added. No effort has been made to present a book making available to the legal and architectural professions the citations of court decisions. That phase of the subject I have already treated in "The Law of Architecture and Building."

My present endeavor has been to approach the subject from a quite different angle. It is my purpose here to place before the architect, very informally, typical examples of the dangers which may beset him in the practice of his profession; to hang up along the architectural highway, as it were, a sufficient number of danger signals, so that he may be warned as he approaches unsafe ground; to emphasize the practical business considerations which today enter into the practice of architecture; to suggest, as best I may,

the means by which the members of the profession may keep to the established and safer routes, rather than stray into those which lead to loss and to difficulty.

For some years, I have made it a point to note the problems with which my architect clients have been confronted. The following pages are based largely upon these actual cases which have arisen in my own practice. It is my hope that, by referring to cases of this kind, which are, I believe, reasonably typical of those which characterize the practice of most architects, the suggestions, cautionary and otherwise, which I have made, will be more directly brought home to the architect and their application to his practice more easily understood by him. The desire to accomplish this purpose is my excuse for referring, as I do, to many cases in which I have acted as counsel. For obvious reasons, it has not been possible, in discussing these cases, to give the names of those whom they have concerned.

The practice of architecture today is a very different matter from the practice of architecture some years ago. Under modern conditions, the architect is called upon constantly to meet problems which, until recently, have not been presented to the profession. It is essential to the proper and successful carrying on of his work that he have a general understanding and appreciation of the basic principles of law upon which his obligations to the client and contractor and their obligations to him are based. It is not intended that the present work shall in any way serve as a book of general prescriptions to meet the ills of the architect's practice, nor is it intended that it shall encourage him to become his own attorney and proceed without proper advice where he should secure it. On the contrary, the purpose is to acquaint him sufficiently with the quicksands lying along his road,

so that he may sense danger in time to secure such advice as may be needed to protect his rights and interests and those of his client.

No architect should endeavor to store his mind with the exact knowledge of everything which he can safely do or of everything which he must not do, unless he have a mind which is far from average. What the ordinary architect can do, however, and should do, is to fix in his mind the main danger signals and areas sufficiently so that he may recognize them when he approaches them. It is not necessary that he know, to protect himself, exactly what he should do in a given case. It is not necessary that he know the exact wording which he should adopt in a letter or contract. It is not necessary that he know to just what limits he may safely go in approving extras or authorizing changes in the plans or specifications. It is sufficient if he knows that in any one of these respects he is approaching or is upon dangerous ground. He can then secure competent advice as to his rights and be guided in his conduct accordingly.

Some people have a genius for doing things first and seeking advice afterwards. Some, on the contrary, are inclined to seek advice on every point, important and unimportant alike. Between these two extremes lies the common-sense rational road to be followed by the ordinary architect of today. When he is on familiar ground over which he has already travelled, let him go forward at full speed. When he is on new and untested ground, notwithstanding that the prospect be fair, let him proceed more slowly and test, by proper advice if need be, the path that lies ahead.

With a few main rules in mind, experience will do the rest. The architect will find that, without great difficulty, he will shortly be able to sense the points in which danger is involved in ample time to avoid them

altogether or, at the least, to receive advice and be in a position to handle them, on a basis which will not expose him to liabilities or to commitments which he does not intend to assume.

An architect cannot be his own lawyer, any more than a lawyer can be his own architect. What he can do, however, is to acquire a sufficiently clear idea of the foundations upon which his rights and liabilities rest to know when he needs legal advice, and when he does not need it.

If he arrive at this point, he will have travelled at least three-quarters of the way along the road leading to comparative safety from unnecessary loss and entanglements. All that I can hope or claim for the following pages is that they may serve to set up guide-posts for the architect sufficient to enable him to pursue his course, without straying into treacherous paths. If they do this my purpose will have been accomplished.

The subject matter is cross-indexed, in order that the architect can turn as quickly and conveniently as possible to the subject which he may have under consideration at a given time.

The appendix includes the forms of agreement between the architect and the client which I have found from actual experience are useful in the practice of the architect and helpful in guarding him against loss and misunderstandings.

It includes, also, a form for a partnership agreement between architects, forms for agreements between architects acting as associates, and a form for an agreement between an architect and a landscape architect. These agreements are referred to in the text as occasion requires. The appendix includes also the Standard Documents, Forms, and Schedule of Minimum Charges of The American Institute of Architects and the Schedule of Minimum Charges of

the New York Chapter of The American Institute of Architects. I wish to express my appreciation of the courtesy of the American Institute and of the New York Chapter, in permitting the publication of these documents and schedules. Also, I must acknowledge my indebtedness to various architects, who prefer that their names should not be mentioned, but who have consented to the publication of forms which I have prepared for them.

The architect will, I believe, derive the maximum of help from the manual by a preliminary reading of the text as a whole and by reference thereafter, by use of the index, to any specific subjects calling for consideration.

CLINTON H. BLAKE, JR.

New York City
June 1st, 1924

CONTENTS

CHAPTER	PAGE
I. THE BUSINESS SIDE OF ARCHITECTURE . . .	17
Architecture today more than a fine art.— Effect of modern business conditions on the practice of the profession.—Necessity of plac- ing conduct of architectural office on business basis.—Practice of profession on business basis consistent with its standing as a fine art.— Practical to deal with client on business basis. —The importance of being definite.	
II. THE CONTRACT BETWEEN ARCHITECT AND CLIENT	27

The contract determines the rights of the parties.—Importance of written contract.—Necessity of clear understanding.—Various forms of contract.—Their respective advantages and disadvantages.—The long form.—The short form.—The intermediate form.—The Standard form of the American Institute.—Implied agreements.—Their disadvantages.—Advantages of express contracts.—Provisions with respect to compensation.—The computation of the commission.—Not ordinarily chargeable on cost of land.—Proof of value of services.—Right to commission on furnishings and decorating and landscape work.—The acceptance of allowances or commissions on purchase of furnishings and fixtures.—Relations between architect and decorators, landscape architects and consulting architects.—Advisability of agreement between them.—Importance of centralization of authority.—Payment of fee in corporate stock.—Cautions to be observed.—Liability to creditors on stock not fully paid.—Income tax considerations.—Protection against insolvency of corporation.

III. THE CONTRACT BETWEEN OWNER AND CONTRACTOR	50
--	----

The architect's interest in the contract.—The standard form of the American Institute.—Consideration of its terms.—Advantages and disadvantages.—Payment to contractor should be contingent on performance.—What law should govern the contract.—Deviations by contractor from contract terms should be clearly restricted.—The authorization of changes.—The ownership of drawings and models.—Status of the architect and scope of his authority.—Tendency to restrict his power and discretion.—Disadvantages of this course.—Decision of disputes by arbitration.—Advantages and disadvantages.—Right of the contractor to act in emergencies.—Preferable to vest emergency authority in architect.—Importance of submission by contractor of schedule of values covering component parts of the work.—Protection of owner against mechanic's liens.—Owner should have right to withhold payment of any instalment until existing liens have been satisfied.—Standard Contract provision with respect to patents, unfair to contractor.—Desirable for architect to have his own contract form.—A meeting of the minds essential to any contract.—Contract must have mutuality.—Offer alone does not constitute contract.—Necessity of acceptance.—Right to withdraw offer prior to acceptance.—Mistakes in bids as affecting contractor's liability.—Supplemental or additional agreements.—Necessity for reducing them to writing.—Written agreement cannot be changed by oral agreement.—Collateral agreements an exception to rule.—All supplemental agreements should be in written form.—Disregard of this caution is dangerous.

IV. REPRESENTATIONS OR GUARANTEES WITH RESPECT TO COST	70
--	----

Danger to architect of representations or guarantees with respect to cost.—Importance

TABLE OF CONTENTS

13

CHAPTER

PAGE

of clear understanding on this point.—Duty of architect to make clear to client probability of extras and impossibility of foretelling cost.—Suggested contract provision for protection of architect.

V. ACTING AS CONTRACTOR OR PRINCIPAL . . . 75

Architect should not become involved as contractor or principal.—Dangerous to act for undisclosed principal.

VI. SKETCHES AND PLANS 80

Payment for preliminary sketches.—Important to provide basis upon which fee therefor may be computed.—Agreement on estimated cost.—Payment for sketches where work suspended or abandoned.—Payment for successive sets of sketches.—Payment for plans and drawings.—Right to charge for successive sets of plans and for changes.—Importance of fixing percentage to be charged.—Popular misconception of effect of American Institute minimum charge schedule.—The delivery of the plans.—Failure to deliver as affecting architect's right to recover.—What constitutes delivery.—Delivery as distinguished from acceptance.—Changes in plans and specifications after approval.—Cautions to the architect.—Changes made necessary by mistakes of the architect, as distinguished from those due to directions by owner.—Payment for extra services and expenses due to changes by client.—Payment for such changes as distinguished from additional basic fee received on added cost.—Insistence of client on changes artistically or structurally wrong.—Action to be taken by architect under such conditions.—Danger of agreement by architect to changes affecting safety of structure.—Liability for injury to the public.—Right to special compensation for work of special character, such as cabinet work.—Importance of office organization in avoiding misunderstandings and placing work on a definite and business basis.

VII. THE TITLE TO THE PLANS 101

General misconception of architect's rights in the plans.—In absence of agreement, plans belong to the client.—Architect should be protected by contract provision.—Rights of third parties in the plans.—Protection of the plans by patent or copyright.—Design patents.

VIII. SUPERVISION 105

Similarity of architectural and legal professions.—Responsibility of architect for reasonable skill and diligence.—Distinction between supervision and superintendence.—Employment of a "clerk of the works."—What constitutes supervision.—Architect's right to delegate authority.—Supervision and other services may be rendered by clerks.—Final responsibility and general direction must rest upon the architect.—Danger of authorizing changes without proper authority.—The issuance of certificates.—Necessity for care and proper checking.—Advisability of securing statement of quantities and unit prices on component parts of work.—Submission by contractor of monthly statements of quantities and prices.—Investigation of current market prices by architect.—Responsibility of architect for negligence in checking requisitions or issuing certificates.—Neglect in over-certification.—Neglect in passing estimates or requisitions carrying improper distribution of profits.—Issuance of certificates as condition precedent to recovery by contractor.—Failure to issue will not necessarily defeat recovery.—Danger of owner giving instructions to contractor direct.—Effect on rights and liability of architect.—Quasi-judicial status of architect.—His duties and rights as arbitrator.—He must have no concealed interest in contract.—Good faith requisite.

IX. COMPETITIONS 131

Increase in competitions in recent years.—Dangers of competitive work.—Lack of definite

TABLE OF CONTENTS

15

CHAPTER

PAGE

contracts.—Ambiguity and uncertainty of published terms as basis of contract.—Danger of terms leaving fee to be determined later.—Competitions for public work.—Contracts with federal, state or municipal governments.—Cautions to be observed in this connection.

X. DEALINGS WITH CORPORATIONS AND WITH THE GOVERNMENT 135

Corporation managed by its board of directors.—Necessity of approval by board of directors of acts of officers.—Contract executed by officer without authority of directors not binding upon the corporation.—Formalities necessary to insure proper execution of contract and protection of architect.—Technicality of governmental contracts.—Services for corporations not yet actually in existence.—Distinction between selection of competitive design, for use if building is erected, and definite agreement to pay for design whether the work be proceeded with or not.

XI. THE LIEN OF THE ARCHITECT 143

Importance of lien protection.—The development of the Lien Law.—Effectiveness of architect's lien in forcing payment of fees.—Right to lien for work done for tenant of office building.—Necessity of approval of work by owner.—What approval is required.—Importance of having approval definite.—Care necessary where title to property is in the name of some one other than the client.—Lien Law purely statutory.—Lien legislation in the different states.—Legal requirements must be strictly complied with.—Necessary to consider laws of state where lien is to be filed.—Legal advice should be secured.

XII. THE REGISTRATION OF ARCHITECTS 150

Registration statutes a recent development.—Merits of registration legislation.—Right of architect registered in one state to prepare

plans for and supervise work in another.—Practice by corporations under registration laws.—The question of “doing business” in another state.—Each case dependent upon the laws of the state involved.

XIII. THE ARCHITECT AS AGENT 153

Dangers which characterize the agency of the architect.—Specific and implied agencies, distinguished.—Dangers of implied agency.—Advisability of securing clear agency authority.—Dependence on future ratification by client inadvisable.—Services by architect in connection with preparation of contract between owner and contractor.—Danger of assuming responsibility for contract provisions.

XIV. TERMINATION OF ARCHITECT'S EMPLOYMENT 157

Employment of architect a contract of personal employment.—Right of client to terminate.—Architect cannot assign contract.—Interests of contractor.—Right of contractor to oppose change of architect and to refuse to proceed under new architect.—The provisions of the contract will control.—Effect of Article 9 of the General Conditions of the Standard Contract.—Obligations of architect to contractor.—Rights of architect on use of plans by client, after abandonment of work.—Contract should cover this contingency.

XV. CONCLUSION 162

Legal “Don’ts” for architects. “Definiteness” a controlling factor.

THE ARCHITECT'S LAW MANUAL

CHAPTER I.

THE BUSINESS SIDE OF ARCHITECTURE.

Practice of profession on business basis practical and consistent with its standing as a fine art.—Effect of modern business conditions on the profession.—Importance of being definite.

Architecture has long been regarded and still is properly classified as one of the fine arts. Every element of tradition in the profession has served to confirm this classification and to emphasize, in the mind of the architect, the fact that the profession is primarily an art. All this is, of course, fundamentally sound, and I have no quarrel with it in any particular, except in so far as it is sought to regard the profession as an art solely and to disregard the everyday prosaic business elements entering into the practice of it. During recent years especially, it has become increasingly apparent that architecture has a business side, as well as an artistic side, and that the architect who would protect his client's interests and his own rights, and avoid serious embarrassment and loss, must recognize the fact that this is so.

In speaking of the business side of the profession I refer primarily to the business and legal elements entering into the relations of the architect, client and contractor, as distinguished from matters of interior office organization and direction.

Architects, as a class, unquestionably regard the

artistic element as paramount, and it is right that they should do so. The difficulty is that very many—the great majority, I fear—persist in viewing their profession as an art alone, and seem to have a feeling that in some way directly or indirectly they are untrue to that art, if they deign to practice it on a basis of business efficiency and organization. For years I have been preaching to my architect clients the doctrine that this point of view is false, that the profession can be followed with due regard to its standing as a fine art, and without cheapening its standing as such in any way, and that at the same time, due regard may be given to the rules of business organization and conduct. In other words, I am heretical enough to believe that an architect may be a great artist in the truest sense of that term and at the same time a man possessed of sound business sense and judgment, and that he may organize his office on business principles and conduct it on a basis of business efficiency, and coincidentally develop work of the highest artistic and architectural excellence. In fact, I know that this is so, because some of my very good friends and clients in the profession—men whose work is nationally recognized as deserving of the warmest praise—are also keen business men, who deliberately make use of their business judgment and ability for the express purpose of safeguarding their own interests in the practice of their profession, and the interests of the clients whom they represent. If one consider the elements which enter into the practice of architecture today, he must realize that the drafting of specifications, the securing of estimates, and the drafting and operation of the building contract, while part and parcel of the primary purpose to achieve an artistic result, have, nevertheless, each of them a purely business side. All of these phases of the work, the supervision of the job, the

arranging with the client for the payment of the fee due, and like items entering into the construction of every work undertaken and carried out, are fundamentally business propositions.

Art and business are not so diametrically and hopelessly opposed as many would have us believe. They may well go hand in hand in the conception and execution of work at once meritorious from the point of view of the most fastidious artistic critic, and at the same time satisfactory and successful, in that it has been carried forward to completion on a sound business basis and in accordance with such business principles as are necessary to protect architect, client, and contractor alike.

There can be no question of the benefit which must accrue to the architectural profession by a more general adoption by its members of business organization and principles. The architect of today owes it, not only to himself but to his client as well, to familiarize himself with the danger points in the practice of his profession and with the general precautions which he should observe to avoid them.

It cannot be logically maintained that a man is any the less an artist because, before undertaking his work, he arrives at a clear understanding with his client as to what his compensation is to be, or as to the basis upon which he is to act. Similarly, he does not lose any of his artistic ability because he sees to it that his office is so organized that the business aspects of the contract, specifications, estimates and the like, and the engineering phases of the work, are passed upon by men trained to appreciate and check them, and that as the work progresses the sums becoming due to the contractor, the accuracy of the items embodied in the certificates, the payments to sub-contractors, and all of the other similar items entering into the usual building operation, are

checked by an employee with a reasonable working understanding of accountancy.

One of the most successful and artistic architects whom I know makes it his regular practice to assume a sort of guardianship over the interests of his clients, in their dealings with contractors, far beyond the point that the ethics of the profession require that he do this. In repeated instances he has called upon me for advice upon matters involving solely the client's interests, not coming within his province as architect as his duties are laid down in the canons of ethics or usually considered, and which he might quite conscientiously and properly have passed along to the client for attention and determination. He has done all this and has not passed the responsibility on to others as he might have done, because he has realized that, by reason of his special knowledge of the situation and facts involved and of the work done, and of the attitude of the contractor and the general psychology of the situation, he has been in a position to give valuable help to the client and to aid him in avoiding unpleasant and expensive complications. This architect has paid for such legal services from his own pocket. Nevertheless, and from personal observation, I am convinced that the practice which he has thus followed has been a very great asset to him in his relations with his clients, an element of prime importance in building up the reputation which his office enjoys, and a sound and profitable investment from every point of view.

If I were asked to sum up in one word the greatest need of the architect of today in the successful practice of his profession—aside, of course, from artistic and engineering training and ability—I should unhesitatingly answer “definiteness.” More troubles brought into my office by architect clients result from a lack of definiteness than from any twelve other

causes combined. The architect may be a genius. He may possess all the artistic and mechanical ability and training in the world. He may have the most charming of personalities and very unusual opportunities to make it felt. Yet, if he has not acquired the faculty of being definite, he will sooner or later, if his practice be on a really worth while and successful scale, experience difficulties which will cause him embarrassment, worry and substantial financial loss. "Be definite" should be the watchword in the office, and throughout the organization, of every architect who would avoid disputes with his clients, disputes between his clients and the contractors, disputes between the contractors and his own organization, and the danger of loss and entanglement in litigation.

If one trace the course of an architect's dealings with his client in a typical case, one will find that, beginning at the first interview and continuing through the selection of the site, the preparation and submissions of sketches, plans, working drawings, specifications and details, and the general supervision of construction, not a step is taken which can be safely taken on any basis other than one of definite and complete mutual understanding. If you were to tell the ordinary business man that he should be sure that everything is understood thoroughly, in putting through a business deal involving the payment of large sums of money, he would in all likelihood think that you were mildly insane in thinking that he might pursue any other course. And yet, if you suggest to the ordinary architect that, in his first interview with his client, or at least at the interview at which he is finally employed and told to proceed with the work proposed, the matter of the compensation to be paid him and all of the other important elements involved in his employment should be discussed, made clear and decided upon, the chances are about ninety-nine

to one that he will tell you that he cannot discuss these subjects with his client at that time, without creating a wrong impression and, quite possibly, losing the job in prospect. I can quite understand how the architect may feel that this is so but, as a practical matter, I am clear that the difficulty which he fears is, in the very great majority of cases, wholly imaginary, and that the client would, indeed, much prefer to start out with a full understanding of all the fundamental rights and obligations involved. I believe that he will not think less of the abilities of his architect because the latter desires to place his dealings upon a clear and business-like basis, and that his mental reaction will, on the contrary, be distinctly favorable to that architect who approaches the job on the basis of an accurate and thorough understanding.

It must be remembered that, from the point of view of the client, the building of a house is primarily a business undertaking, and his relations with the contractor and architect alike are business relations purely. He employs the architect, it is true, as an expert trained to give him both a pleasing result and a house suited to his particular requirements, but he nevertheless regards, and quite properly regards, his relations with the architect as business relations, in the sense that the professional relationship involved is upon an ordinary business basis. The client does not resent, and rather welcomes, the desire of the contractor to have everything clearly understood before the work is undertaken. There is every reason why he should welcome a similar attitude and desire on the part of his architect.

If a customer desires to buy some commercial product, he will wish to know the terms upon which it will be sold; if he desires a portrait painted, he will wish to know how much the artist will charge

for painting it. So, if a client desires to have plans prepared for a country home and to have the erection of the house supervised by a trained architect, there is every reason in common sense why he should prefer to know the basis upon which the architect will charge and the other terms and conditions, both as respects the rights of the architect and his own rights, upon which the work will be undertaken and carried to completion. I am glad to say that there has recently been evident an increasing and very gratifying tendency on the part of architects to appreciate the fact that this is so, and to exercise a much greater degree of care in arriving at a fair and full understanding before undertaking the work.

Aside from the contract, which is the chief matter of importance, the obvious method of being definite is to cover, by letters or memoranda, all points which should be safe-guarded and made matters of record. A word of caution should be added, however, with respect to the danger of too free letter-writing. It is unquestionably desirable to cover in written form the important points as they arise. It is equally important that the letters and memoranda be prepared and used with discretion and with proper care.

Just as there is a tendency on the part of many architects to neglect putting anything in writing, so there is a tendency on the part of many others to write too much. I have in mind repeated instances in my practice, where architects have courted trouble and become involved in expensive and annoying entanglements and misunderstandings, solely because they have been too ready letter-writers. As between writing no letters and writing too many, without proper thought of the effect of what is written, I should unhesitatingly choose the first alternative as the lesser of the two evils.

The golden mean is to write letters only when

they are necessary to make definite your relations with your client or with the contractor, or some issue involved in the relationship between the contractor and the client. There are cases where it is imperative that a proper letter be sent covering some of these points. Where this becomes necessary, however, it is of prime importance that the letter be prepared and phrased with care and that you secure proper advice regarding it, before it is mailed. In other words, cut out all unnecessary letters, put your emphasis on those that are necessary, see that they are sent in time and in proper form, and that they are correctly worded from the point of view of your own interests and the interests of the client.

It is quite natural that an architect, unacquainted with the law and the technicalities of the legal construction of what is written, should write, in many cases, letters, the legal effect of which is entirely different from the real intent and purpose and understanding of the writer. A phrase which, to the architect, may seem entirely innocuous, or a phrase which may connote to him a certain conclusion, may have, and often has, a very different meaning and effect, when considered from the point of view of the lawyer or the court. The letter may contain, legally speaking, an admission which binds the architect in some way, and to an extent, which he has not intended or contemplated at any time.

As an example: it may be taken as a guarantee by the architect that the cost of the building will not exceed a certain amount, when, in fact, all that he has meant to do is to give to the client a statement of his best guess regarding cost. It is very easy in the phrasing of what you write, unconsciously to slip across the border line which divides a direct representation on your part, that the cost will be limited to a certain figure, from a mere estimate on

your part of what the cost will be, based on your experience and general knowledge, but not intended in any way as a guarantee that your figures are accurate or that the cost will fall within the upset figure which you give. Similarly, in the case of dealings with sub-contractors, a letter may be intended to accept a bid and close a contract, in behalf of the client and, by a failure to make clear the fact that the architect is acting as the agent of the client, may bind the architect, as principal, so that the sub-contractor, in case of the default of the client, may look to the architect for his compensation. The architect will do well to consider the potentialities for disaster which characterize situations such as these.

The architect may, again, write to the client, stating that he will proceed under the Schedule of charges of The American Institute of Architects, or of the New York Society of Architects, or of some similar body. He may have in mind, when he does this, the fact that his basic rate is to be more than the minimum rate prescribed by the Schedule of Charges of the Institute or of the Society, but he may fail to mention his basic rate in his letter, and he may find that, by phrasing his letter as he has, he is limited to the minimum rate set forth in the Schedules.

Only a short time ago, I represented an owner in a dispute with an architect, where the architect had written a letter confirming his employment and stating that his charges would be based on the Schedule of the American Institute of Architects, when, in fact, he had reference to an entirely different schedule. The owner proceeded on the assumption that the architect meant what he said and, when the architect's bill for a larger amount than that specified in the Schedule of the Institute came in, he naturally objected to paying it. The re-

sult was that the architect was bound by the letter which he had written, and was unable to collect the amount of his bill, as rendered. If he had given a moment's additional thought to his letter, and seen to it that it was exact in its terms and in accordance with his intentions, he would have saved a considerable amount of money.

The cases where careless or thoughtless letter-writing is responsible for loss might be multiplied almost indefinitely. The remedy in all cases, however, is the same, namely, to take more care with your written records, whether in the form of letters or otherwise; to place nothing in writing, unnecessarily, and, on the other hand, to place in written form, carefully checked and prepared, all those really essential matters on which written evidence is desirable.

CHAPTER II.

THE CONTRACT BETWEEN ARCHITECT AND CLIENT

Contract determines the rights of the parties.—Importance of clear understanding and written contract.—Various forms of contract.—Agreements—express and implied.—Provisions with respect to architect's compensation and computation thereof.—Commissions and allowances on furnishings and the like.—Relations between architect and consulting architects and decorators.—Payment of fee in corporate stock.

It is manifest that the contract between the architect and his client, whether it be oral or in writing, forms the basis of their relationship and becomes the determining factor in the establishment of their respective rights and obligations. There is no room for argument, in my opinion, with respect to the desirability and entire practicality of the use by the architect of a written contract as a regular thing in the practice of his profession. A contract which is verbal, in whole or in part, is open to misconstruction and to uncertainty from the beginning. Granting that each of the parties is entirely sincere and strictly honest, the human memory is necessarily imperfect and, after the lapse of time especially, disagreements as to the terms which were determined upon will inevitably arise. In referring, therefore, to the contract between the architect and his client, I should be understood as speaking of the written contract, which is the only really worth while form of agreement for the determination of questions as important as those involved in the building operation, and in the mutual rights and obligations of the owner and of the architect whom he chooses to act for him. For

some years, I have made a practice of noting the various problems which have been presented to my architect clients in the practice of their profession, and the various difficulties with which they have met in carrying out the work which they have undertaken. There are certain fundamentals which apply almost without exception to the relationship of any architect with any client. There are other problems peculiar to the practice of the individual architect which may not be encountered generally by others of his profession.

The ideal contract, from the point of view of the protection of the architect's interest, is that contract only which will cover in the fullest detail, and in the broadest way, all problems which are likely to be presented in his dealings with the client and discount the future to the fullest possible extent. In some cases, the adoption of a contract of this character may not be practical and, in order to secure the execution of a contract by the client, a less formidable form of contract is necessary. To cover these varying conditions, I prepared for clients, some time ago, what, for purposes of differentiation, I have called the "long form" contract, the "short form" contract, and the "intermediate form" of contract. The long form, so-called, is a full form providing, as far as possible, for all contingencies which may occur and covering the rights and relationships of the parties in detail. Its form, however, is kept as simple as possible. In its printed form it is on one sheet of paper. The face of the paper, where the signatures are placed, carries only a few lines, reciting that the owner has employed the architect to perform the services in question—outlining these very briefly—for the commission specified and that the architect has undertaken the work, all in accordance with the terms and conditions printed on the reverse side of the paper.

On the reverse, preferably in comparatively fine type, so that they may all be included on the one sheet, are all of the general conditions of the contract covering the matters of compensation, agency, extras, estimates of cost, supervision, the employment of a clerk of the works, and all of the other points which conceivably may be involved before the completion of the work covered by the contract.

Although care has been taken, as stated, to make this contract appear as simple and innocuous as possible, there are now and then, inevitably, clients who are not willing to sign it, because of the number of the conditions which it carries, but who are both willing and glad to sign a much simpler form of contract. For these cases, the second and so-called short form of contract has been prepared. It contains a few lines reciting the employment of the architect and then incorporates, as a part of the agreement, by reference merely and without setting them forth at length, the terms and provisions of the Schedules of Practice and Charges and Canons of Ethics of the American Institute, as modified, if such be the case, by the Schedule of Charges of the Local Chapter of the Institute. There are a number of important points which the schedules and canons of ethics do not cover and, as to these, this short form contract is consequently silent. Nevertheless, it has been found to serve a most useful purpose and is immeasurably better than no contract in writing. It would be a captious client indeed who would take any offense at the request that he sign it.

Another form of contract lies in its scope about midway between the long form and the short form contracts. It covers specifically the more important points upon which the architect should be protected and then incorporates, by reference, the Schedule of Charges and Canons of Ethics of the Institute, so

far as they are not inconsistent with the specific recitals already made. This contract can readily be included on one side of an ordinary office sheet of paper, and will, in all likelihood, cover successfully the majority of cases arising in the practice of the architect. It is usually the odd case which creates difficulties, however, and there can be no question that the long form contract is the form which should be adopted wherever this course is practicable. I believe that in about eighty per cent of the cases arising in the practice of the ordinary architect, the client will sign the long form contract, without question, and that in practically all of the remaining twenty per cent of the cases, he will gladly sign either the short form contract or the intermediate form, to which I have last referred. These contracts are printed in moderate quantities and held in the office of the architect for whom they are prepared, ready for use when required. Wherever circumstances are such that the long form may be used, it is employed. Where this is not practical, the intermediate or short form contract is relied upon. In the case of one large office that I have particularly in mind as I write, the firm has not once had occasion to resort to legal proceedings since it has adopted as a regular policy the use of the written contract with its clients. The contracts have been accepted by the clients, as a matter of course, and the clients have, I think, been favorably impressed by the business-like character of the proceeding.

It is needless to say that there is nothing in any of these contracts unfair to the client. The agreements merely give definite and concrete expression to the terms upon which the parties, in fairness to each of them, should proceed, instead of leaving these terms to conjecture and inference, and so inviting disputes and misunderstanding. If a client is the kind who

will refuse to back up the architect in his decisions, as the work progresses, or who will be inclined to take an attitude unfair to the architect, or who is incapable of appreciating the work done by the architect and the award to which he is reasonably entitled, it is much better to know these things in the beginning, than to undertake the work and learn them to one's cost later on. There is no better way of determining the type of client with which the architect is dealing than to present to him for signature a contract setting forth the terms of employment. If he means to play fair and handle the matter in a spirit of understanding and co-operation, he will have no objection to signing the contract. If he has the type of mind which results so often in misunderstandings and differences while the work is in progress, he will indicate it by his reaction to the contract provisions, and the architect will be forewarned in consequence.

In comparatively recent years, the increasing recognition by architects of the advantages of a contract with the client has resulted in the publication of the Standard Form of the American Institute. The publication of this form has marked a long stride forward. In the first place, it has made available generally to architects a printed form of contract, and, in the second place, due to the prestige of the Institute and its sponsorship of the form, it has brought home to the architect the thought that possibly the use of a written contract in his dealings with the client is not so impossible and revolutionary a thing as he has heretofore believed it to be. The Standard Form is, I do not doubt, the best form that could be worked out, in an effort to provide a form applicable to all practices and agreeable to the majority of architects. It omits, however, various provisions which are to be found in the long and intermediate forms of contract, to which I have re-

ferred, and which are of real importance in the architect's practice.

Some of the provisions of the Standard Form call for special comment. In Article 1, the architect is charged with the keeping of accounts and the general administration of the business and supervision of the work. The reference to supervision is quite in order, but the agreement as to the keeping of accounts and the general administration of the business might have a much broader meaning than that contemplated by the parties. These latter references might well be omitted entirely. If they are retained, they should be so amplified as to make clear just what accounts are referred to and what is meant by the administration of the business. The architect and the client might each construe these terms in an entirely different way, and wholly unnecessary misunderstanding be caused in consequence.

The provisions of Article 5, with respect to the payment to the architect, in the event of the abandonment or suspension of the work, opens the door, it seems to me, to a substantial loss to the architect under certain conditions. As Article 5 is worded, the architect, where the work is suspended or abandoned, "is to be paid in accordance with or in proportion to the terms of Article 6 for the services rendered on account of it up to the time of such abandonment or suspension." Article 6 must therefore be read in conjunction with Article 5. The danger of these clauses, as they stand, is that, if the work is abandoned at a point where, for instance, the architect has completed the preliminary studies, and has proceeded with some of his work on the specifications and working drawings, the client can claim that the only payment due the architect is twenty per cent of the basic rate. Under Article 6, twenty per cent of the basic rate would be the only amount payable at

that point in the building operation. The payment of this amount to the architect would clearly not be fair, however, because, having proceeded with the specifications and working drawings, he has incurred additional expense and performed additional services. The contract should be so worded in all cases, in my opinion, as to insure payment to the architect of the full amount of the work which he has performed up to the time of the abandonment or suspension of the work by the client. It is very rarely that the suspension or abandonment would take place at the exact time when the first twenty per cent stage of the work has been completed, or when the second sixty per cent stage of the work has been completed. The chances all are that, when the work is suspended or abandoned, the architect has proceeded with the next stage of the work beyond that completed at the time of the abandonment, and he should be protected accordingly.

Under Article 6 the balance of the fee is payable "during the execution of the work and in proportion to the amount of service rendered by the architect." It is preferable to provide that this shall be payable as the work *of the architect* progresses. Payment will not then be dependent, possibly, upon the progress made on the job itself.

With respect to Article 7, a statement that any directions of the owner to the contractor shall be made through the architect will serve to obviate any divided authority in the direction of the work, and will protect the owner and the architect alike.

Article 10 of the standard form of agreement is to my mind very dangerous. It provides that no estimate given by the architect "can be regarded as other than an approximation." The clear inference which this wording carries is that it *is* to be regarded as an approximation. If this means anything, it means

clearly that it is to be taken as approximately correct. No architect, no matter how experienced he may be, or what may be the sources of information available to him, can under present building conditions have any assurance that he can correctly approximate the cost of a proposed job. It is the everyday experience of architects throughout the country that estimates which they make, with full consideration and care, are far below the lowest responsible bid received. If the architect enters into a contract with the client in the wording of Article 10 and submits an estimate of cost of \$500,000 and the work costs \$750,000, as may well be the case, the client can certainly, with a fair show of reason, take the position that the architect's estimate is not approximately correct and that, for this reason, he has not fulfilled the terms of his agreement. In this case, the architect might not only lose his fee, but might face a claim by the client for damages occasioned to the latter by the inaccuracy of the architect's estimate.

Article 14 provides that "all questions in dispute under this agreement shall be submitted to arbitration at the choice of either party." Arbitration is an excellent thing in its place, but to say that every question arising under the contract shall be referred to arbitration is inadvisable, it seems to me, from the point of view of the owner as well as from the point of view of the architect. It is a fair statement, I think, to say that the result of the ordinary arbitration is that the arbitrator more or less splits the difference between the parties and that no one as a rule is entirely satisfied. In addition to this, an arbitration proceeding is not as simple as one would suppose. I have been through a number of them recently, and I am not at all sure that, aside from the delay in the jurisdictions where the calendars are crowded, a trial before a good judge and jury is not

preferable. It may be well to leave to arbitration, if the parties desire it, certain of the matters which may be in dispute between them, but to provide broadly that every question in dispute, which will include of course the amount of the compensation due the architect and all claims which the client may advance against him, whether justified under the contract or not, are to be determined by arbitrators, rather than by a court, is dangerous in the extreme.

There are various other matters which the Standard Form does not fully cover and which should be provided for where possible. Examples of such provisions may be found in the long form contract in the appendix. For example, the provisions with respect to special work, payment for successive sketches and plans, payment of commissions on furnishings, fixtures and landscape work, and the like.

With respect to this whole question of the contract between the client and the architect, whether the form preferred is the Institute form or another form, it must be remembered always that the practice of every architect has certain special characteristics which distinguish it from the practice of other architects. To secure the best results, each architect should have prepared for him the form of contract which meets the special requirements and conditions of his own practice. A contract which is drawn to protect an architect specializing in country houses will have many provisions which are not applicable to the practice of an architect specializing in apartment buildings, or of an architect engaged in hotel work. In the case of a large operation, such as the building of an hotel, the architect will doubtless, for example, employ a resident superintendent of construction at his own expense, where in the case of residential work such employment would either not be necessary or, if made, would be at the expense of

the client. In the larger operations, many of the items which would be necessarily covered in residential work can safely be omitted, while, on the other hand, the architect must be careful to see that he is perhaps more fully protected on other points, which to the residential architect may be of minor consequence. The forms given in the appendix cover various types of architectural practice, varying from residential work to apartment house or hotel work. The best use, however, which the architect can make of these forms is not to adopt one of them bodily, but to use them as a guide in evolving the form of contract best suited to his own practice and specially prepared to meet his own problems.

One of my clients has adopted a rather ingenious compromise, which, while not as effective as the making of a proper contract with the client, is nevertheless interesting. He has printed a small and rather informal-appearing schedule of his charges, in general terms, based largely upon the schedule of charges of the American Institute and of the New York Chapter, and has headed it, "Practice and Charges of (name of the architect)." When a client calls and asks him to undertake a new piece of work he hands him, in the course of the discussion, one of these schedules. He does not ask the client to sign any agreement or to sign or initial the schedule, and does not lay any particular stress on the schedule. He says simply enough to indicate that this is the basis on which his work is done.

This procedure is frankly a compromise between the alternative, on the one hand, of not mentioning the matter of charges and the other terms upon which the work is undertaken, and trusting to secure payment of the reasonable value of the work done in due course, and the alternative, on the other hand, of asking the client to sign a formal agreement speci-

fixing the exact terms upon which the work is undertaken, and the rights and liabilities of the architect and the client in connection therewith. The best that can be said of it is that it is a vast improvement on the custom of many architects of saying nothing, and that in the case of a dispute it enables the architect to urge, with a fair chance of success, that the client was put "on notice" as to the terms upon which the work was to be carried out.

In a number of cases which have arisen, I have brought suit for this particular architect successfully on the theory that there was a definite contract, between the client and himself, to the effect that the work would be done and paid for under the conditions, and at the rates, specified in the schedule which he handed to the client. This is on the theory that the client, in going ahead with the work, after having been given a copy of the schedule and told that it represented the charges and terms of the architect, must legally be deemed to have agreed that the work should be done and paid for accordingly. This is treading upon very treacherous ground, however, and I am never very happy in these particular cases until the court or the jury has finally determined that a contract really did exist and that the terms of the contract are the terms which are stated in the memorandum. Testimony by the client or in his behalf that the memorandum was brought to his attention in a casual way only, or that it was not made clear to him that it was to control the particular job in which he was interested, or that verbal modifications of the terms stated in it were agreed upon, might well upset the whole contract theory and rob the schedule of much, if not all, of its effect.

Where a contract cannot be established the architect will not be able to sue upon the theory of an express contract, but will have to depend for his

recovery and for the enforcement of his rights upon the theory of what the lawyer calls a "quantum meruit." Translated into everyday English this means upon an implied agreement by the client to pay the reasonable value of the work done. When this is the case entirely new elements are introduced into the situation. The architect cannot go into court and show that the client promised to pay him a definite sum and recover that sum accordingly. He must, on the contrary, bring in expert testimony—in addition to his own—to prove to the satisfaction of the court and jury the reasonable value of the services which he has performed. The client can then introduce, on his part, testimony to show that the work was not of the value claimed, and that the experts who have testified for the architect have placed upon it too high a valuation. Thus, an entirely unnecessary issue is at once presented for the consideration of the jury, and the old condition of opposing experts, testifying some for the plaintiff and some for the defendant, is again presented. The result will probably be a compromise verdict at the best.

It needs no elaborate argument to show that a litigant who can present a definite contract, signed by the man whom he sues, is in a much stronger and more advantageous position than the claimant who comes into court without any such basis for his suit. Where a contract is made the defendant cannot avoid the issue, by contending that the terms embodied in the agreement were not the terms upon which the work was done, because the court will not allow the terms of a written agreement to be varied or changed by an alleged verbal understanding inconsistent with them. Again, the client will not be allowed to attempt to show that the consideration to be paid the architect, as stated in the contract, is more than the

work is worth, because, having agreed in writing to the specific amount, the court will hold that he is bound by the agreement which he has deliberately made. Proof of the written agreement and of the proper performance of the work contemplated by it will be enough. No expert testimony will be required as to the value of the work, and the jury, having the definite writing before it, will usually find a verdict for the full amount agreed upon.

The ordinary practice and the ordinary contract and agreement, pursuant to which the architect performs his work, calls for the computation of the commission upon the total cost of the work. The total cost of the work means the construction work and, if any different basis of computation is in the minds of the parties, the contract should make clear exactly what is contemplated. I have in mind the case of an architect who entered into a contract with a county for the preparation of drawings, specifications, and engineering and supervisory services, in connection with the erection of a county building to be erected at the county seat and on a site to be designated by the county.

The county agreed to pay the architect a fee of 5% on the total cost of "said improvements for which said architect renders services." Preliminary drawings were started, but before they were approved, a controversy arose with reference to the site of the building and developed into a very bitter and long drawn out fight. Various public meetings were held, and at one of these meetings the architect was present and suggested that he prepare contour maps and estimates of cost for the five different sites which were under discussion, in the hope that this might provide a basis for determining the most satisfactory and economical site. The architect prepared the maps and estimates and at length one of the sites

was decided upon and purchased. When the architect came to make up his first bill, he included a charge of 3% on the cost of the site, as well as on the estimated cost of the building. This was paid to him. Later, the complexion of the County Board changed and the architect submitted his final 2% charge, figured also on the cost of the land and building. The Board refused to pay it and claimed, in addition, that the amount on which the 3% was figured should not have included the cost of the land. The questions presented are whether the architect, under these conditions, has a right, in figuring his commission, to include the cost of the site and, secondarily, whether, if he cannot do this, he can recover the value of his services in preparing the contour maps and estimates of cost for the proposed sites.

It seems reasonably clear that this architect could not include the cost of the site, in estimating his fee. The wording of the contract is peculiar, in that the 5% is to be figured, not on the total cost of the work or of the building, but on the total cost of the "improvements for which said architect renders services." This might conceivably mean the site as well as the building itself, but it seems to me that this would be a strained construction and that the reasonable meaning of the contract, especially in view of the ordinary practice in the profession, should be construed to be that the fee is to be figured on the cost of the building itself, and that the word "improvements" as used has reference to the actual structure to be erected and the work done on the property, as distinguished from the cost of the property.

It is true that the services of the architect, in preparing the contours and the estimates, entered into the purchase of the land, and that to this extent he was instrumental in aiding in securing the site. This

work, however, was really extra, and apart from the architectural services contemplated by the contract. If the architect is to receive compensation therefor, it must rest, I believe, on a separate agreement, to pay him for the contours and estimates, or on his right to recover their reasonable value, in the absence of any express agreement to this effect. In the case to which I refer there was no such agreement. On the other hand, it did not appear that the architect agreed to do this work gratis and therefore he was entitled to recover the reasonable value of the work done in preparing the contours and estimates.

The question arises in this particular case, whether his claim for this amount is to be against the county or others. Apparently, he was told to go ahead and do this additional work at a general public mass meeting and not in the first instance by the county authorities. On the other hand, the facts seem to indicate that the county adopted his work. If it can be shown that the county did this and made use of it, he should be able to recover from the county for its reasonable value. If it appears that the county did not, in fact, ratify or avail itself of the benefits of this work, then the architect's claim would have to be against those who, as individuals and members of the meeting in question, authorized him and requested him to proceed with the work.

In any case, where the circumstances are such that it is contemplated by the parties that the cost of acquiring the property is to be included in arriving at the compensation to be paid the architect, the only safe course is to have the contract specifically so state. Otherwise, the natural inference will be that the general practice of the profession will be followed and that the commission of the architect will be based on the actual cost of the work done, without including

therein the initial cost or value of the real property on which the building has been erected.

There is no reason, in the ordinary case, why an architect should be paid any commission on the cost of the land. Acquirement of the land is an entirely separate transaction from the building operation. If the architect is called upon to perform special services with respect to the acquirement of the land, then he should protect himself by having a proper and special provision included in the contract, covering the additional compensation due him for whatever special services he is called upon to perform in this connection.

Where the rate of commission is not specified, but the architect is compelled to resort to proof of the reasonable value of the work done, there is at once presented the question as to what this reasonable value may be and of how it is to be determined. I was recently called into a case where there was no commission agreed upon, but the architect charged a commission of six per cent. The client objected to this rate as excessive and refused to pay. Every case of this kind will depend, for its determination, upon the special facts involved in the given situation. In a locality where the usual rate for similar services is six per cent, the architect can show this fact and, if he can establish that the rate which he seeks to recover is not more than the usual and customary rate in force in the vicinity, he should recover. He may, the New York courts have held, put in evidence the charge schedule of the American Institute of Architects as showing the custom in the profession. He may show that he has done work previously for the client and that the rate then charged him was the same as the rate which he now seeks to sustain. He may show that he has charged the same rate generally in his practice and that the client, while he has

not before had direct dealing with him, has been aware of the rate charged by the architect to other clients.

All of the foregoing are methods of proving the reasonable value of the architect's services. In the last analysis, it is a question of fact, as to what such reasonable value is. The client, on his side, may of course bring forward evidence to contradict that adduced by the architect and the question, if carried to a final conclusion, will in all likelihood not be decided until it has been passed upon by a jury or by a board of arbitrators.

This situation emphasizes anew how important it is to have a definite contract covering the architect's services, and how great an amount of uncertainty and wholly unnecessary confusion and legal complications will be avoided by securing such a contract in the first instance. It emphasizes, too, the importance of a written, as distinguished from an oral, contract. If the agreement is verbal, there will still be a mass of contradictory evidence to be passed on. If it is in writing it speaks for itself and will control, in determining the respective rights and liabilities of the parties.

Where the work is of any considerable importance, the furnishing, decorating, and landscaping items will amount in the aggregate to a considerable sum. If the architect's employment is confined to the building alone, he may not be in a position to charge a commission on any of these items, although the owner will doubtless seek and expect his advice with respect to them.

It is, therefore, important that the contract contain a clause protecting the architect in this connection and giving to him the right to charge and collect a commission on landscape, decorating and furnishing costs, where he is consulted in these matters, at the

same rate, at the least, as that which he charges for his regular services. Where this is done, the architect should give to the client the benefit of the allowances from the regular retail prices, customarily made to architects on the purchase of furniture, hangings and the like. If he is to receive a commission on the cost of these from the client, he should not place himself in the position of accepting and retaining a commission from the manufacturer or retailer as well. For the same reason, in figuring the commission charged to the client in such cases, the cost figure used should be the net cost after taking advantage of the dealer's allowance to the architect, as distinguished from the full list or ordinary retail cost.

One of the items on which the architect will most frequently be called upon for advice, and upon which he should be entitled to charge his commission, is the lighting fixtures. The contract clause should be broad enough to cover all materials and fixtures chosen under the architect's advice or installed under his direction.

Of recent years, there has been a marked increase in the number of interior decorators and landscape architects. Many are thoroughly high class and competent—many are not to be included in either classification. Where a decorator or landscape architect, or consulting architect, is employed on a job, the regular architect should be diligent to see that there is no chance of any conflict between their duties and those which he is to perform. In many cases, there will of necessity be an overlapping of the services rendered by the architect and those rendered by the decorator or landscape or consulting architect. If necessary, such a situation should be taken care of by an agreement between the architect and the others who are

thus called in to advise with him. This agreement should make clear their respective spheres of activity and rights to compensation. Also the contract between client and contractor should be so drafted, in the beginning, as to insure the architect recovering the amount of commission to which his services entitle him, irrespective of such advice on special matters as the owner may decide to seek from others. To insure the best results and closest co-operation, the controlling power and direction should remain vested in the architect, subject only to the wishes and approval of his client. Wherever possible, any divided power and responsibility should be avoided, in the interest both of the architect and of the client. The greater the centralization of authority in the architect, the more free he will be to work out a uniform scheme, and to give the best possible service to the client, unhampered by conflicting authority granted to others.

Any client, who is a business man, should readily appreciate the help which an architect can give to him in advising in matters of decoration, furnishing and landscaping. He should realize with equal readiness the importance of avoiding conflicting authorities and of centralizing the general control of the whole operation in the hands of one person. The time to cover this situation is in the beginning and the architect, whenever possible, should see that it is considered and properly taken care of at the time that the work is undertaken. Similarly, any agreements between the architect and other advisers employed by the client, or between such additional advisers and the client, should be made at the time the decorators or landscape architects are called in and not after they have undertaken and completed in part the work assigned to them. The client should be advised of any such agreements.

Due to the increasing adjustment of the profession to meet present day business conditions, some architects are now requested, in large development and building projects, to accept a portion of their compensation in the stock of the corporation conducting the work or carrying out the plan of development. In the case of a great modern hotel or apartment house, for instance, the architect is often asked by the promoters to accept stock in part or even in full payment of his services. When the architect undertakes work on this basis, he will do well to bear several cautions in mind.

When the stock of a corporation is issued, it is ordinarily what is known as fully paid stock. By this term is meant, in the law, stock, payment for which, has been made in full at the time of its issuance. If stock has a par value of \$100, for example, the company when the stock was issued must have been paid \$100 per share in cash, or been paid in the form of property valued by the directors at the full par value of the stock issued in return for it. In recent years, a new class of stock has come into general use, known as stock of "no par value." Where this is used, the stock to be full paid must be originally issued at the valuation and in return for the consideration, approved by the Board of Directors and authorized by law. When stock has been issued and paid for and then donated back to the company, it becomes treasury stock and can ordinarily be resold or distributed by the directors on such terms as they may deem best in the interests of the company. Stock which has never been issued is not treasury stock, although it is often erroneously referred to as such.

Where stock, when originally issued, was not fully paid for, the stockholder is liable to creditors of the corporation for the difference between the amount

paid for the stock which he holds and its full par value, or the amount of the consideration for which its issuance was authorized, in the event that it is stock of no par value.

The directors of the corporation also can call upon the stockholder at any time to pay this difference to the company. It is readily apparent that the architect should verify the fact that the stock which he receives is full paid and non-assessable. If the stock has never before been issued and is issued in the first instance to him in payment for his services, and by a proper valuation by the directors of those services in an amount equal to the par value of the stock, the stock will be full paid. If it is treasury stock, it should appear that, when originally issued, it was full paid. If it is stock of no par value, it should appear that when originally issued, either to the architect or previously, the value of the consideration for which it was issued was legally established by the directors and the full value, thus established, received by the corporation in payment for it.

An additional caution is in order at this point, in view of the present day Federal and State income tax laws. If the architect renders a bill for \$10,000 and accepts payment of it, \$5,000 in cash and the balance in stock, he is thereby in effect establishing the fact that the stock received is worth \$5,000 and he will have to include this valuation of the stock as taxable income in his tax return. The value of the stock may be, and in many instances will be, highly problematical and the foregoing situation will, in such a case, be unfair to the architect. He should either, in rendering his bill, place the value of the stock at a figure which discounts its speculative character, or else, when it can be safely done, make his bill payable in so many shares of stock rather than in dollars. In following this latter course, it should always be borne

in mind, however, that the situation must be handled in such a way as to have the stock full paid and non-assessable.

The tax and corporation laws are so voluminous and so varied in different jurisdictions, that the client will do well to seek competent legal advice in all matters relating to stock issues and tax possibilities.

When stock is later sold at a profit, the profit is quite properly taxable. The possible danger and injustice to the architect does not lie in such a case, but in the possibility of his being made to pay a profit on the transaction by which the stock is received—a profit which may be a technical profit and not an actual one.

Where the architect is willing to accept stock, in part or full payment of his services, it is important also that he so phrase the contract as to avoid the possibility of being called upon to accept stock of a less value than that contemplated. If the corporation, the stock of which is to be issued to him, is duly organized and functions as a going concern and is successful, the stock which he receives will be of the value which was contemplated by the parties. On the other hand, in many cases, it is quite possible that the corporation for one reason or another may not be successfully launched or operated, or may become insolvent before the stock is delivered. In any such event, or in case the plan for financing the corporation falls through, the architect should not be forced to accept stock in a defunct corporation, or in one the future of which is precarious. His agreement with the client as to the stock should provide, therefore, that, in the event that the corporation is not organized as planned or fails to function as a going concern or becomes insolvent, or in the event that the plans for financing the corporation are not

carried out as contemplated, the compensation which he would otherwise receive in stock shall be paid to him in its specified cash equivalent. The contract should be so worded that it is made clear that the understanding is that the stock to be paid to the architect shall, at the time it is received by him, be of the actual value contemplated by the parties. Of course, if the stock is not a real consideration in the mind of the architect and if the cash fee is sufficient to reimburse him, and he is willing to take his chances as to the value of the stock, he can proceed on that basis. If, however, the stock is a real consideration in his mind, in entering into the contract, and he will not receive a proper reward for his services, in the event that the stock given to him is of little or no value, then, for his proper protection, he should take the precautions suggested. He will not, in that event, be placed in the position of being compelled to accept stock of a negligible value, where he has expected to receive stock of actual and substantial value.

The sum to be paid to the architect for his services is only one of the items which should be clearly understood and agreed upon. In many ways, it is of less importance than other points, such as the right of the architect to make necessary modifications, his right to authorize extras, the fact that he must not guarantee that the work can be done for any specified amount, and similar provisions. These merit discussion under separate headings. They necessarily have a direct bearing upon the preparation of the contract and the compensation of the architect.

CHAPTER III.

THE CONTRACT BETWEEN OWNER AND CONTRACTOR

The interest of the architect in this contract.—The Standard form of the American Institute.—Its advantages and disadvantages.—Desirable that architect should prepare his own contract form.—Meeting of the minds essential to a contract.—Mutuality.—Offer and acceptance.—Supplemental, additional and collateral agreements.

While the architect is not a party to the agreement between the owner and the contractor, he has a vital interest in its terms. The relations of owner and contractor can, for our purposes, be best treated by a consideration of the Institute's Standard Form of Agreement. In referring to this agreement I shall have reference, of course, to the complete agreement, viz., the agreement proper and the general conditions, specifications and drawings as well.

Article 3 of the form of agreement proper, as distinguished from the general conditions, provides that the agreement, on the part of the owner, to pay the contractor, is subject to "additions and deductions as provided in the general conditions." The wording of the above phrase might with advantage, it seems to me, be made somewhat broader. The agreement of the owner is subject not only to these additions and deductions, but is subject, and should rightly in every case be subject, to the performance by the contractor of all the substantial conditions specified. It would seem that it would be advisable, therefore, especially if there be any question of the standing of the contractor employed, to amplify the phrase quoted so as to read, in substance, that the agreement of the owner to pay is "subject to the conditions and deduc-

tions provided in, *and to the performance by the contractor of all of the terms of*, the general conditions of the contract." The obligation of the contractor to perform, as a condition precedent to his right to receive payment, would doubtless be implied in any case, but it is well to leave as little to implication as possible.

Coming now to the general conditions of the contract proper, sub-division "g" of Article 1 provides that the law of the place of building shall govern the construction of the contract, and by Article 45 the same plan is adopted, with respect to the arbitration scheme provided for, and it is specified that the arbitration procedure shall conform to the laws of the state in which the work lies. In many cases, especially where the owner and the contractor are residents of the same state and where the work is done within that state, there would be no objection to the clause as set forth in the general conditions. If the work is to be done, however, in some other state the owner and the architect, and for that matter the builder as well, should give careful consideration to the matter before agreeing that the laws of a different state shall govern their dealings and determine their obligations. They should at the least, before entering into any such agreement, find out just what these laws may be, how broad they may be with respect to liens and the like, and how they may affect the dealings of the parties.

In Article 5, relating to shop drawings, it is provided that the approval by the architect "shall not relieve the contractor from responsibility for deviations from drawings or specifications unless he has in writing called the architect's attention to such deviations at the time of submission." This provision is dangerous in the sense that the implication from it clearly is that, if the contractor has called the

architect's attention to deviations from the drawings and specifications, the contractor will not be responsible therefore. The architect, in the absence of special authority, has not power to authorize any changes in the plans or specifications or any deviations from the work as therein set forth. The above implication is inconsistent with this rule.

Article 24 of the Standard Documents, it is true, provides that no change (other than as provided in Articles 3, 9 and 18) shall be made, unless in pursuance of a written order from the owner, signed or countersigned by the architect (or a written statement by the architect that the owner has authorized the change), and that no claim for an extra over the contract amount shall be valid unless so ordered. This provision is quite in line with the legal rule to which I have above referred. It is in line, also, with the various cases holding that the owner cannot be bound by changes in the plans and specifications authorized by the architect, but not approved or authorized by the owner.

It would be well it seems to me, if the wording of Article 5 were so altered, therefore, as to avoid any inconsistency, and any misleading interpretation thereof, either on the part of the contractor or on the part of the owner. The owner and contractor have, of course, the right to provide, by the terms of the contract, that the architect may make such changes and authorize such deviations from the drawings and specifications. The general legal rule quoted would not apply, if the contract were drawn so as to give this specific and special authority to the architect. The Standard Documents, however, do not do this and, as pointed out, Article 24 is quite specific in its statement of a contrary intent and understanding.

Article 7 refers to the ownership of drawings and

models. It provides that all models are to be the property of the owner and that all drawings and specifications and copies thereof, furnished by the architect, are to be the property of the latter. This clause must not be assumed to fully protect the architect, for it does not, as it does not go far enough. It recognizes the necessity of a special agreement if the plans are to remain the property of the architect. Its weakness lies in the fact that it is a term of a contract which is entered into between the owner and the contractor, and to which the architect is not a party. The question of the ownership of plans lies, primarily, between the architect and his client. If the architect is to be properly protected on this point there must be an agreement between him and the client, direct, covering the ownership of the plans and specifications.

There is no objection to Article 7 and it is probably advisable that it should be included, so that the question of the ownership of the plans may be clear as between the owner and the builder. The architect should realize, however, that the agreement between these two does not adequately protect him and that, if his right in the plans is to be properly covered, it should be provided for by a separate agreement between him and his client.

Articles 9 and 10 have to do with the status of the architect and the general scope of his authority. Whether they be approved in the standard form, or disapproved, depends upon the personal point of view of the party entering into the contract, and upon the conception which one may have of the proper scope and character of the duties of the architect of today. The effect of these provisions and of Article 45, which should be read in conjunction therewith, is, undeniably, to cut down the discretionary activities of the architect to a minimum, and to leave

all possible questions open for adjustment at arbitration. One good result of this course is that it may lessen, somewhat, the danger of an architect exceeding his authority and incurring liability to the owner, or to the contractor, as a result. Personally, however—and this is purely a personal feeling—I question whether the curtailment of the authority of the architect, as this authority is curtailed by the Articles above referred to, is in the best interests of the profession and its work, or in the best interests of the client.

It has long been customary to provide in the building contract that the architect, in substance, shall have full charge of the work of supervision and that all questions relating to the interpretation of the plans and specifications, and the like, shall be referred to and decided by him. All that the Standard Contract form does is to provide that he shall have personal supervision and direction of the work. The clause does not amplify this statement in any way and the general effect of the wording of Articles 9 and 10 is, certainly, to lessen the usual authority of the architect, in that the various provisions customarily used, in amplification of the phrase that he shall generally direct and supervise the work, are lacking.

It is of prime importance that the architect should not have the idea that he has authority to act for the owner on any point which may arise. Caution on this point is essential. I heartily approve the purpose which underlay, I take it, the framing of Articles 9 and 10, viz.: the desire to make clear the fact that the architect has not a blanket authority and that any special authority, to be properly exercised by him, must be properly and specifically granted. It seems to me that there should be, and that there is, however, a desirable middle course, be-

tween the failure to point out the limitations of the architect's status and the narrow construction of his authority as given in the Standard Documents. I cannot help feeling that the work turned out by the profession will be benefited, that the rights of the ordinary client will be better cared for and safeguarded, and that a more satisfactory job will be assured him, if the architect be given, under the contract, a much more general power and discretion, than is provided for, or contemplated by, the Standard Documents.

While believing thoroughly in the settlement of disputes by arbitration, rather than by resort to the courts, I yet feel that it is a mistake to leave too many details open for decision by arbitration. Any arbitration, at the best, involves time, delay and expense. It is, unquestionably, desirable that questions which should not be decided by the architect and which may lead to controversy between owner and contractor, should be settled by arbitration, between the latter two, if and when they arise. It is, I am convinced, equally desirable that as many points as possible should be settled and settled definitely, under the contract, by the architect, whose training and professional qualifications equip him, especially, to deal with them and to decide them with fairness to both parties.

I therefore favor a moderate modification of Articles 9 and 10 and of Article 24 also, in so far as the latter is related to them, so that they may specifically grant to the architect the right to decide questions involving the interpretation of the plans and specifications, and disputes between the owner and contractor, which naturally fall within the classification of points which an architect, by his technical education and training, is specially equipped to handle and to decide.

If the architect act in bad faith, then, of course, the contractor should have the right to go behind his decision. Assuming, however, that the architect employed is a thoroughly competent and high class man, I can see nothing to be gained and much to be lost by making the arbitration provisions so sweeping as to, in effect, make all of the important decisions of the architect subject to review by a Board of Arbitrators. The competent architect is certainly as well qualified to pass upon these questions, as the arbitrators whose appointment is contemplated under the Standard Documents.

To allow appeals to the arbitrators to be taken wholesale, wherever the contractor is dissatisfied with the decision of the architect, necessarily lengthens the time of uncertainty and of final determination, and to a considerable extent must inevitably weaken the authority and power of the architect. I doubt if this is a desirable result. If the architect be given a broader authority and broader powers of determination than those contemplated by the Standard Documents, it is then important that, at the same time, the contract be so worded as to protect the architect in his exercise of the powers and authority so granted. In other words, while it is desirable, as I see it, to strengthen the position of the architect, as the man best qualified to pass upon matters in dispute, and to eliminate unnecessary controversy by making his decision final, in so far as that be possible, yet the architect must be so safeguarded that, in exercising these powers and this authority, he will not subject himself to any personal liability to the owner or to the contractor. His position should be akin to that of a judicial officer. His action as an arbitrator is essentially in the nature of a quasi-judicial act and it has been recognized by the courts that such is the case.

Recent provisions of the New York law have greatly strengthened the effect of the decisions of arbitrators, and have given to them a recognized force and binding effect which, before the change in the statute, they did not have. This marks a distinct advance in the desirable tendency to dispose of disputes by arbitration, rather than by long drawn out and expensive legal procedure. Unquestionably, it may be desirable to leave some of the more important and fundamental issues between the contractor and the owner open to arbitration and the change in the New York statute will facilitate the carrying out of this purpose. The idea of arbitration, as proposed in the Standard Documents, is good, but its extension beyond a certain point will not, I believe, prove to be in the best interests of the owner or the architect.

It is undoubtedly true that the arbitration policy laid down in the Standard Documents tends to favor the contractor, in that it allows him to appeal on so many points from the decisions of the architect. Given a conscientious and high-class architect, however, I doubt if the contractor will be any the worse off if his rights are settled directly by the architect, without further arbitration or appeal, other than such right of appeal to the courts as he may have under well recognized rules of law. It has been my experience that the decision of the architect, in questions involving the interests of the owner and contractor alike, favor the contractor quite as often as they do the owner. In fact, I know of many instances where the architect has deliberately sacrificed the good will of his client, in order to be fair to the contractor and to protect the latter on some point in which he has been right and the owner has been wrong.

Article 18 gives the right to the contractor to act in emergencies in cases *not considered by him* as com-

ing within the provisions of Article 17. This provision, as it is worded, is dangerous, in that it in effect leaves it to the contractor to determine whether an emergency case comes within the provisions of Article 17 or not. Under Article 18, if the contractor considers that the case does not fall within the scope of Article 17, he apparently can proceed under Article 18. It would be much preferable and safer, if the clause in Article 18 "not considered by the contractor as within the provisions of Article 17" were omitted entirely, and the article so amended, as to provide that, in emergencies of the class indicated, not coming within the scope of Article 17, the contractor may act without special instruction or authorization. This would make it simply a question of fact as to whether the emergency were such as is contemplated by Article 18 or should have been classified under Article 17.

The lessening of the scope of the contractor's discretion on this point has one weakness, in that it unquestionably would tend to make him loath to assume responsibility in an emergency, where it might be important that he should do so and that he should act promptly. As between this danger, however, and the danger of giving the contractor the extremely broad discretionary power contemplated by Article 18, a middle course might easily and with advantage to all concerned be worked out, on a basis of a more exact definition of emergencies, and at the same time the elimination of the objectionable phrase which leaves the decision so entirely in the hands of the contractor. In fact I believe that by far the better practice is to vest emergency authority in the architect, rather than in the contractor.

Article 24 of the Standard Documents has been already referred to, in part, under the discussion of Article 5. The provisions of this article, whereby the

various alternatives of estimate and costs, the unit price and the like are fixed, and the architect given authority to require an account of costs in such form as he may deem proper, are especially valuable and helpful and in line with a smooth working understanding between the parties. The clause seems to deal, however, with the situation where the change in the work has increased the cost, rather than effected a saving. While this is undoubtedly the ordinary effect of a change in plan, the contract should contain a proviso covering a credit to the owner for any saving due to changes. The opening sentence of Article 24 indicates that it is intended that the Article shall cover deductions from the cost of the work as well as increases. This intent should be carried into proper effect in the body of the Article and the owner assured of a proper deduction, in cases where the change effects a saving, just as the contractor is assured of an increase where the change means an increase in cost.

The provision in Article 25, whereby the contractor must give notice of claims for extras, is excellent. This article, however, must be read in conjunction with the provision for arbitration to which I have already referred. In line with the feeling which I have expressed, regarding the arbitration clause of the Standard Form, I cannot feel that it is advisable to leave claims for extras and changes so entirely to arbitration. Any savings effected by the changes in the plans the architect should certainly be able to certify accurately, and he should be equally able to pass intelligently and promptly on claims by the contractor for extras. I can see no good to be gained, and much harm to be done, by allowing an appeal to an arbitration board from his determinations, on items of this character.

Article 26 is in line with sound practice and the

provision requiring the contractor to submit the schedule of values of the various parts of the work and similar necessary information is valuable. It is important to obligate the contractor to submit to the architect a proper statement covering the component parts of the job. If these data be intelligently and carefully made use of by the architect, it will enable him to conduct the work with a minimum of misunderstandings between the owner and the contractor, and a maximum of protection to the owner and to himself.

Article 29 I believe to be too narrow. The owner should be protected beyond any question against the filing of mechanics' liens during the progress of the work. This article attempts to cover the point by holding up the final payment and the retained percentage until a release of the liens has been secured or the liens bonded. The article also provides for a refund to the owner by the contractor, on account of any lien remaining unsatisfied when the final payments to the contractor have been made. To give proper protection to the owner the article should be broadened, so as to enable the architect or owner to hold up the payment of any instalment, at any time, until any lien then existing has been properly satisfied or bonded. The owner should not be placed in a position where he is compelled to proceed with the work while there are liens on the property, and to depend merely upon his right to hold up the final payment, or the retained percentage. The lien might, indeed, exceed these amounts, so far as the wording of Article 29 is concerned, without giving to the owner any broader remedy than that specified therein.

Article 31 I believe to be too stringent as against the contractor. The question of patents is one which arose repeatedly, and was especially emphasized, in

contracts between the government and various manufacturers and contractors during the World War. The general idea upon which Article 31 is based is good, viz.: that the contractor should protect the owner from suits based on infringements of patents, involved in the construction of the work in hand. The exception to this rule, which was quite carefully worked out in the case of the government contracts referred to is, nevertheless, I think, fundamentally fair and, in fairness to the contractor, necessary. This exception may be carried into effect by the addition of a clause providing that the contractor shall not be compelled to make good claims for royalties or license fees, in those cases where the particular patents, for the infringement of which such claims are made, cover work which is made part of the specifications on the insistence of the owner. If, for instance, a contract calls for certain construction in definite terms, without specifying a special process, the contractor should save the owner harmless, from claims by the holders of letters patent which he may infringe in working out this construction. If, on the other hand, the owner introduces into the contract the provision that certain work shall be done in accordance with a certain specified process, or that a particular type of concrete construction or a certain type of patented trim or the like, must be used, there is no reason in equity why the contractor should be forced to make good, to the owner, claims made by holders of patents covering this special work. The contract should be drawn accordingly. The suggested broader form of understanding on this point is fair to both sides. It protects the owner, where he should be protected, and it does not penalize the contractor for complications which are not his fault.

In Article 38, a possible confusion may arise by reason of the wording of the clause giving the con-

tractor the right to stop work, if the owner shall fail to pay "any sum certified by the architect or awarded by arbitrators." Under the scheme adopted in the Standard Contract, the architect might certify certain sums and this certification might then be submitted, at the instance of the owner or at the instance of the contractor, to arbitrators. There would be a distinct interval of time intervening between the certification by the architect and the decision by the Board of Arbitrators. It is not clear, under the clause as worded, whether the owner would be compelled to make payment of the amount, within a certain time after the architect certified it, irrespective of the fact that an appeal from such certification had been made, or whether, where such an appeal is made, the obligation of the owner to make payment would not become effective until after the certification of the architect had been confirmed by the arbitrators, or a modified award on the item in question made by them.

Many architects have their own particular forms of construction contracts. When these are worked out by competent attorneys they are preferable I think to the Standard Form. The latter is preferable, however, to forms prepared without expert advice.

In the last few pages, I have necessarily touched on some of the points in the Standard Contract which seem to me to contain weaknesses and to require modification. Lest there be any misunderstanding of my feeling with respect to the Standard Documents, however, I wish to emphasize again my conviction that their preparation and adoption has been of immense value to all of the trades involved, to the architect, and to the owner. The standardizing of the forms of agreement, the careful work which has evidently entered into the preparation of all of these

papers, the spirit of co-operation between the various associations concerned, and the constructive work of the American Institute, which have, together, made possible the adoption of the Standard Forms, all deserve the warmest praise.

A word should be said with respect to the right of the bidder to withdraw his bid, and of the owner to compel the performance by the bidder of the work which he has undertaken to do. Misconceptions exist in the minds of some on these points, and it is well that the architect should be clear as to each of them.

It is a fundamental rule of contract law that, in order to have a valid contract, there must be a meeting of the minds, as we lawyers term it. This means that the minds of the parties must have met, in the sense that they have both agreed on the terms of the contract with a proper understanding on each side of these terms and of the meaning of the agreement made. It is also fundamental that the contract must have what is called mutuality. This means that there must be an obligation on the part of both of the parties to the contract. In the case of a building contract, there must be the obligation on the part of the contractor to do the work and on the part of his employer to pay him for the work done. The contract must not be "one sided."

An offer in itself, be it ever so definite, cannot and does not constitute a contract. Something more is needed, namely, the agreement by the other party to the terms of the offer and the acceptance of the offer by him. If an owner requests the submission of bids and bids are submitted in the most definite and clear form imaginable, they remain bids, and are not transformed into a contract, unless and until they are accepted as made. Up to that point, they are merely offers, submitted by the bidder and subject to with-

drawal or modification by him at any time, prior to their acceptance.

The acceptance necessary to transform a bid into a binding contract must be definite and unconditional. If a bid is submitted by A and B writes back that he accepts the bid, but states that he does so on a condition which adds a new term to the agreement, there is no contract, unless the bidder approves and agrees to the additional term thus imposed. If he does not agree to this, he is quite free to withdraw his bid, and the acceptance is not, under these conditions, sufficient to create a contract. Where the bid is accepted, without any new condition being imposed and without the bid having been withdrawn prior to the acceptance, the acceptance completes the contract and the latter thereupon becomes effective.

The law does not require that the offer or the acceptance shall follow any cast iron formula or make use of any technical phraseology. So long as the intention of the parties is clear and so long as it is established that a proper offer has been made and that this offer has been accepted as made, the contract is in effect and can be relied upon by either party. This rule, of course, would not apply where, for a proper consideration, the contractor had agreed that the bid should be a firm offer and not subject to withdrawal for a certain period.

With respect to the question of whether the owner can make a bidder accept a job, the answer is in the negative. If a bid is made and accepted, the most that the owner can do is to call upon the contractor to perform the contract resulting from the offer and acceptance and hold him liable in damages, in the event that he does not perform this contract. The law will not take a contractor by the neck and physically compel him to erect a building which he has agreed to erect. This is beyond its scope and power.

It will say to him, "You are obligated, legally, to do this work and, unless you do it, the owner will be entitled to recover from you all of the damages occasioned to him by your refusal to live up to your undertaking." Beyond that point it cannot go.

There are cases where the law requires specific performance of a contract. These, however, are cases such as an agreement to convey real estate, where a Court of Equity can compel a conveyance to be made in accordance with the agreement. The difference between this class of cases and the ordinary building operation or the ordinary contract for personal services is clear. Where, in one case, the law can compel the defendant to do that which he has agreed to do, in the other, it can do no more than recompense the other party for the breach of the contract and the damage occasioned him thereby.

In considering the matter of a bid and its acceptance, it must not be assumed that, if the contractor makes a mistake in his figures, this will be such a misunderstanding as will relieve him from his obligations, in the event that the bid is accepted. If a bid which is perfectly clear and definite is submitted and the other party, in good faith, accepts the bid and acts upon it, the contractor submitting it is bound by the offer which he has made, notwithstanding the fact that he or one of his employees, in arriving at the figures which he has included in the bid and submitted to the owner, has been in error. An error of this kind is the fault of the person submitting the bid and the innocent party accepting the bid in good faith cannot be made to suffer for the mistake.

There may, of course, be certain other conditions under which a bid might be withdrawn, even after acceptance, as for instance, if its submission had been secured by false representations or if it had been submitted by someone who had undertaken to repre-

sent the contractor, without authority to do so, or the right to bind him. Cases of this character are, however, entirely special in their circumstances and governed by distinct rules of law which are not applicable to the ordinary case of the submission of a bid and its subsequent withdrawal or acceptance.

It often happens that, in addition to the general written contract, there is a supplemental or additional agreement between the owner and the contractor, covering some new developments in the work or some understanding not embraced within the terms of the general contract. Where this is the case it is important that any such additional understanding be reduced to writing.

There is a special reason for this, aside from the general desirability, which I have emphasized, of having all understandings in written form. There is a rule of law which provides that the terms of a written document cannot be varied or changed by oral evidence. The rule is an entirely reasonable one and its purpose is to protect parties, who have entered into a written agreement, against the attempt of either one of them to evade the terms of the agreement, by testimony to the effect that the agreement does not mean what it says, and that an additional verbal agreement has been made between the parties which changes the terms of the original written instrument.

Under certain circumstances, such as the case of an agreement which is clearly collateral to the original agreement, the oral agreement will be recognized as valid, but it is never safe to depend upon this exception to the general rule. If the original agreement be in writing and any changes in that agreement are contemplated, or any new understanding between the parties relative to the work covered by the original agreement are desired, the only safe course for

the parties to pursue is to reduce the new understanding, or the amplification of the original agreement or the changes therein as the case may be, to written form.

I have been discussing recently, with an architect, a case which shows how easily the failure to reduce the oral understanding to writing may result in loss and embarrassment. In the case which I have in mind the builder whom the client proposed to employ did not operate a union shop. The architect, knowing this fact, had a conference with the builder and told him that, while his client would like to employ him as the contractor on the job, he could not do this unless he were assured that there would be no difficulties with the unions, and that the job would not suffer by reason of the fact that the contractor was a non-union man. The contractor assured him that he could do the work without precipitating any difficulties of this character and it was agreed specifically between the architect, acting for the owner, and the contractor, that the contractor was awarded the contract to perform a portion of the work on the building, on the understanding and representations and guarantee by him that he could do the work, assigned to him, without any difficulty being raised by the union officials. The contract with this contractor covering the work to be done by him was reduced to writing. This contract did not make any reference, however, to the understanding regarding the union situation and the oral agreement entered into, on this point, was not put in writing.

Hardly had the work been commenced, when the unions descended upon the owner and architect and served notice that none of the other work on the job would be attended to, so long as the non-union contractor was employed. The result was that the owner, in order to secure the erection of his house,

was forced to make a new contract with a union contractor covering the work which it had been originally agreed the non-union contractor should perform. The latter promptly sued the owner for breach of the written contract.

The defense to the action lay in the proof, if possible, of the oral agreement between the parties, and in the oral guarantee and representations by the contractor that he would be able to do the work without interference by the unions, and the fact that the contract was accepted on this understanding. The court refused to allow evidence of the oral understanding and the contractor was given judgment.

All of this difficulty would have been obviated had the agreement and guarantee on the part of the non-union contractor been reduced to writing. A few lines in writing signed by him, giving the substance of the oral agreement and making it clear that the written contract was entered into by the parties on the understanding stated, would have obviated the whole difficulty and would have placed the contractor in a position where it would not have been possible for him to sue successfully. It would have been still better if there had been inserted in the original written contract itself a clause specifying that, in the event that any difficulty were raised by the unions, the obligations of the owner to continue under the contract would terminate, and that the contract might, under such circumstances, be terminated by the owner at his option, accordingly.

This is only one of a score of cases which might be cited, all emphasizing anew how many difficulties may flow from the failure to secure, in the first instance, some very simple written statement or agreement. What I have said, with respect to supplemental agreements which attempt to change the terms of the construction contract, applies equally to any

agreements which attempt to vary the terms of the contract between architect and client.

I realize that it is quite natural that an architect, in the midst of a busy practice and with his chief attention focused on the plans for the work proposed, should not have in mind the desirability of covering points of this character by written memoranda. If the architect will, however, realize the amount of damage which may come, both to his client and to him personally, by a failure to have all important understandings relative to the work reduced to writing, he will find that the acquisition of this habit is an asset of tremendous value in the practice of his profession. Also he will find that the client will appreciate being advised with respect to his agreements with the contractor and his rights and obligations thereunder. I can only suggest that, in handling the various jobs committed to his care, he endeavor to consider more carefully each problem as it presents itself, and that, before acting, he analyze it from the point of view of whether the action which he proposes to take is sufficient to safeguard his clients' rights and his own rights as well. Where there is the slightest doubt in his mind, or where an agreement between any of the parties is of substantial importance, he should take proper advice and see that the situation is covered by a definite written agreement in proper form.

CHAPTER IV.

REPRESENTATIONS OR GUARANTEES WITH RESPECT TO COST.

Their dangers.—Importance of clear understanding.—Suggested provision for protection of architect.

If the amount due for services be the only issue, the architect may at the worst lose a portion of the gain which he anticipated would accrue to him from a particular job, and find that he has given his time for nothing or for less than he should receive for it. If, on the other hand, the client comes in with a claim against the architect based, for instance, on the allegation that the architect has represented and guaranteed that the work can be done for a definite amount, whereas in fact the cost of the work has been vastly more than the limit set by the architect, the latter is not only faced with the danger of losing his fee, but is quite likely to be called upon to pay the difference between the estimated cost and the actual cost. It is to prevent just such a claim as this, and to anticipate and make impossible misunderstandings and claims against the architect, on many other points which I propose to note, that the contract between the client and the architect is designed. The contract, if properly drawn, will take care of all of the danger spots in the ordinary relationship of client and architect.

The matter of an alleged or implied guarantee by the architect, to which I have already referred, is very seldom considered by architects in their dealings with their clients, and yet among the earliest

legal decisions are cases holding the architect liable on the theory of a guarantee of price on his part. This naturally comes about because one of the primary considerations with the ordinary client is that of expense and the cost of the work. This being so, at the first interview or interviews with the architect, it is inevitable that such a client will ask the architect to tell him for how much the work can be done. This is the danger point. If the architect replies that he believes it can be done for a certain amount, but that he can manifestly only guess and give to the client his best judgment, and if he makes it clear that he does not in any way guarantee that it can be done for the amount which he names, the danger point is successfully passed and there will be no "come-back" against the architect. If, on the other hand, the architect, either in his natural desire to secure a lucrative or interesting piece of work, or thoughtlessly and with the best of intentions and desire to help the client and being convinced in his own mind of the accuracy of his judgment, states that the work can be done for a definite amount it is quite possible that he will so phrase his statement that the court will construe it to be a guarantee on his part that the work will be done for this amount. At the least, it may be construed to be a representation by him made to induce the client to proceed with the work and binding upon him in the event that the client does so in reliance upon it.

The evident intent of the provision in the Standard Form of contract that the estimates of the architect are to be considered as approximations only is to protect the architect, where the cost exceeds his original estimate. I very much doubt, however, if it does so, as I have already indicated.

Suppose that the architect has estimated that the cost of a certain job will be \$100,000 and that the

cost proves to be \$125,000. In such a case, it is evident that the architect's estimate is not even approximately correct. The inference from the wording of the Standard Form is that the architect, while he does not undertake to forecast the exact cost, does undertake to give the approximate cost. In the foregoing supposititious case, therefore, the architect would not be covered by the wording of the contract, since his estimate had not been approximately correct.

It is of manifest importance that this point of cost and estimates should be made clear, beyond any possibility of ambiguity and misunderstanding. In these days, especially, when no one, not possessed of occult powers, can foretell the trend of labor and material costs, no architect can afford to make any cost estimate, without an absolutely clear and definite understanding that it is his best guess merely, and that, no matter how far wrong it may prove to be, no responsibility shall attach to him as a result of it. It is not a matter of any special difficulty to so phrase the contract that this point will be properly covered and the architect should not sign any contract which does not adequately cover it. Indeed, he should not give any estimates, no matter how informal they may be, unless and until it is understood, without qualification, and confirmed, preferably in writing, that the estimates are not in any sense binding representations or guarantees, no matter how accurate or inaccurate they may be.

If there be no written contract, the architect should by letter, or at the very least, orally, make clear to the client, beyond any possibility of misunderstanding, that he is giving the client his best cost *guess* only and that it is given for what it may be worth, and without recourse in any way so far as the architect and his relations with the client are concerned.

Let him choose his words carefully when cost is mentioned. Let him, by office memorandum or otherwise, see to it that the other members of his organization who may come into touch with the clients of the office, are cautioned to exercise a like discretion and to avoid any thoughtless or loose statements which may, months later, reappear, to cause loss or embarrassment to them or to the organization of which they are a part. Let him remember that his compensation is based on the cost of the work and that, from the ethical, as well as the legal, point of view, he must be diligent to avoid giving to the client the slightest ground for feeling that the architect has, by a low estimate, mistakenly or by intent, induced him to proceed with the work, and at the least incur a substantial charge for the plans and for the specifications.

Aside from the duty of thus protecting his own interests and rights, it seems to me that the architect owes a duty to his client to make sure that the latter understands the impossibility of making any exact or approximately exact estimate. The ordinary client is very likely to attribute to the architect powers of divination which the architect does not possess. He is very likely to have the impression that the architect has, as a result of his professional training, acquired the power to foretell costs with substantial accuracy. He has little idea of the inevitability of extras in the most carefully planned undertaking. He should in all fairness be set straight on these points and understand both that the estimate given may be greatly less than the bids received and that, before the work is completed, the original contract cost will have been materially added to, by extra items which no architect or contractor could have foreseen in the first instance.

Any architect who gives an estimate of cost, with-

out adequately guarding himself with respect to it, is deliberately courting trouble. If he wishes to do this, he should not underestimate the dangers of the step which he is taking and its potentialities for disaster and loss.

The contract with the client should contain a clause providing specifically that any statements made by the architect regarding cost are not to be construed in any way as representations or as guarantees; that they are made solely for the information of the client and that the architect is not to be held liable in any way, on the theory of guarantee or otherwise, in the event that the cost exceeds the amount estimated by him. This is a perfectly fair provision, and is so worded that no fair-minded client can properly take exception to it. It effectually prevents, however, any danger of loss to the architect on this point. At the same time it is helpful to the client in that the architect, being thus protected, is willing to express himself with much more freedom than he would if he had in mind the necessity of making guarded estimates in the absence of such a contract provision. The client in consequence receives the benefit of estimates which the architect might ordinarily be unwilling to make.

CHAPTER V.

ACTING AS CONTRACTOR OR PRINCIPAL.

Architect should not become involved as contractor or principal or act for undisclosed principal.

There is a somewhat similar but a less common danger in which the architect may become involved, namely, that he may, if his statements to the client regarding the cost of the building are phrased loosely, be held to have assumed himself the relationship and obligations of a contractor or principal. This is not at all a fanciful danger, and is one which, if it come to pass, is calculated to place the architect in a distinctly unpleasant position.

It is but a short time ago that a well-known New York architect consulted me in a case where, innocently and without any intention on his part of assuming any obligations as contractor, he had become involved in this very particular. It all came about because the architect had written a few letters, the legal effect of which he did not consider, and which he quite naturally regarded as merely routine letters incident to the work proposed. A client had come to him with some tentative plans for the alteration of an existing building. After examining them, he had advised that certain changes be made which would improve the general lay-out and scope of the work. The client, as usual, wished to know how much the work would cost. The architect promptly sat down and, in blissful ignorance of the legal effect of his phraseology, wrote a letter by which he meant to state merely the amount which he estimated would

be involved, but which, as a matter of fact, was so worded as to give some ground for a claim by the client that the architect had offered, as contractor; to do the work for the sum which he mentioned in the letter.

The plan which had really been contemplated was that the client should place the monies necessary to cover expenses in the hands of the architect from time to time as the work progressed; that the architect should attend to the employment of the contractors to do the work and should make payment to them, *for the account of the client*, from the monies so received, and for his services should receive merely a stated architect's commission. This would have been all very well if the architect had covered himself by a proper letter or contract, but the situation was aggravated by the fact that, in addition to writing the client as he did, he failed to make clear to the contractors the fact that he was employing them in behalf of the client, and carried on his correspondence with them and requested and accepted their bids, in many instances, in his own name. The client almost from the first made changes, some minor and some radical, in the proposed plans and work and, consequently, the cost of the work began to run far beyond the figure originally contemplated. The client, as is sometimes the case, did not understand why making changes in the middle of the work—taking out a staircase here and putting it in there, changing a swell-front to a square-front and vice versa and the like—should affect the cost as it did. The inevitable result was that disagreements arose between the client and the architect. The client, seeking legal advice, was advised to hold the architect responsible as the contractor for the work, on the theory that the architect had assumed this obligation, and that the contractors whom the architect

had employed were really sub-contractors of the general contractor, the architect.

The situation was further aggravated by the fact that many of these same so-called sub-contractors, not receiving the amounts due them because the client refused to advance further monies, manifested a determination to hold the architect responsible as the principal with whom they had dealt. The architect, accordingly, was faced with the danger of losing his fee and of being held responsible as contractor for the performance of the work at a price far below the actual cost. All this was manifestly unfair to him, as he had undertaken the work in the best of faith and had suggested that he let the contracts to the contractors and attend to the payments, for the purpose of saving money for the client. The client did not appreciate this, or if he did appreciate it was not inclined to "play the game," and, as a result, we had real difficulty in working out the situation in such a way as to safeguard the architect and extricate him from the position in which he had placed himself. If he had, in the first instance, drawn up some simple contract with the client the danger would never have arisen, as it would have been made clear at once by the contract that the architect was assuming merely the ordinary obligations of an architect, and was acting as the agent of the client in arranging for the carrying out of the work by the contractors. If the architect had at that time prepared a proper form of contract he would have had no difficulty in securing the signature of the client, the work would have been completed without loss to the architect, and in all probability the client would have remained satisfied.

The claim of the sub-contractors that they had dealt with the architect as the principal was, in part at least, based on solid ground. It is true that they

should have realized that it was a rather extraordinary proceeding for an architect to employ them directly and for his own account. They must have known that, in requesting and accepting bids, an architect acts ordinarily for the client and does not assume, or intend to assume, any personal liability. Nevertheless, here was a case where no mention of a principal was made. The architect, in requesting bids, said nothing from which it could be reasonably implied that he was acting for another. Such implication as there was to that effect had to result from the fact that he was an architect and that architects are not wont to act as principals in this way. It was quite possible, so far as the record showed, that the architect was personally interested in the building as its owner or part owner. It was quite possible that he was acting accordingly for himself and not as a professional man representing a client.

In any event, the result was sufficiently serious. The claims of the sub-contractors amounted to a tidy sum and the unfortunate architect was at the well known and exceedingly unpleasant half-way station between the deep sea and the devil. If the sub-contractors were not paid, they would sue him, with at least a fair chance of recovery. If the architect paid them, he would be admitting his liability to them and might not be able to recover from the principal the amounts so paid. Certainly he would have to go to court to recover it. There was no question but that the moral obligation to pay rested directly upon the principal, who had full cognizance of the steps taken in his behalf by the architect. The principal, however, declined to pay the sub-contractors, manifestly hoping by this method to force the hand of the architect.

It was a decidedly unpleasant situation and the architect was very fortunate in being able to emerge

from it without loss or litigation. The sub-contractors, most of them, were fair-minded men and appreciated the situation, when it was explained to them. The owner finally advanced the money required to meet their claims and the difficulties, so far as their claims were concerned, were thus taken care of.

If the architect had, in any way, made known to the sub-contractors the fact that he was acting for the client—even if he had not mentioned the name of the latter—how much of worry and expense he would have avoided! How simple it would have been for him to preface his request for, and his acceptance of, the bids by the words “in behalf of my client, John Jones” or words to that effect.

If he had understood something of the dangers of acting for an undisclosed principal, he would have completed the work without difficulty and without loss. If he had secured about fifty dollars’ worth of advice in the first instance, he would have saved many hundreds of dollars in legal expenses, and days of his own time, worth several thousands more. Another example of the stitch in time doctrine and of its special applicability to the practice of architecture!

CHAPTER VI.

SKETCHES AND PLANS.

Payment for preliminary sketches, plans and drawings.—Right to payment for successive sets of sketches or plans and for changes.—Delivery and acceptance of plans.—Architect's liability to public for structural defects.—Special work.

The contract, whatever form is adopted, will ordinarily specify the basic rate of commission and that the commission is to be computed upon the total cost of the work. It will doubtless contain also the usual provisions with respect to the instalments in which it is to be paid and the times when the respective instalments become payable.

The payment of the compensation due him, without delay or dispute, is naturally a matter of special importance to the architect. It is important, as we have already seen, that the amount of compensation be fixed by the contract. It is equally important that the architect be fully protected on all of the points which have to do directly with the determination of the final amount of the fee.

It is amazing how many clients, including men familiar with and trained in business dealings, look upon the preparation of preliminary sketches as in the nature of a gamble on the part of the architect. They seem to have the point of view that, when they ask for preliminary sketches or studies, and these are undertaken and prepared by the architect, the latter prepares them as a speculation and on the understanding that, if they are not accepted, the client is under no obligation to reimburse the architect for the time given to their preparation.

The contract, to adequately protect the architect, must not only provide that the sketches shall be paid for, but must also fix the measure of the fee to be charged for them. Unless a fixed sum is agreed upon to cover them, it is necessary to so draw the contract that the percentage charge for the sketches can be accurately determined. To cover this point, the agreement should specify an estimated cost—always with the necessary safeguards in connection with the estimate which we have already discussed. If the sketches are made, and the work is not proceeded with, the proportion of the fee due for them can then be figured upon such estimated cost. If bids are taken, the contract should make the lowest bid of a reputable contractor the basic figure on which the commission is figured. If a bid is accepted, and the work carried out, the first one-fifth of the commission will be computed on the contract price and, if the final cost is increased by necessary extras, the additional fee due on the increased cost will be taken care of on the payment of the final instalment. In this way the fee for the sketches can be figured with mathematical certainty, in accordance with the terms of the contract, whether the work is abandoned before any work is commenced, or after bids are received, or is proceeded with to completion.

It is of equal importance that the architect be protected with respect to the preparation of several sets of sketches. He will be an unusual client indeed who accepts the first sketch submitted to him and does not require the submission of alternative schemes. When a client is difficult to please, and it becomes necessary to prepare set after set of preliminary studies, the expense to the architect mounts up more quickly than the ordinary client conceives to be possible. Few people outside the architectural profession realize how much thought, and how much

time and labor and expense, go into a set of preliminary sketches.

In this respect, the architect's position is very similar to that of the lawyer who prepares a will or contract. The completed paper probably appears simple enough and the client wholly fails to appreciate the time which has been expended in an examination of law, in working out the phrasing of the various paragraphs to get just the shade of meaning desired, and in preparing the preliminary drafts which have made possible the finished result. Similarly, in the case of the architect and his sketches, the client does not appreciate the necessity of testing various possible solutions, or the conferences and the time which enter into the preparation and submission of the sketch.

When sketch after sketch is rejected and new ones are requested and made, the architect is headed straight for a possible loss, unless his contract with the client gives to him the right to collect for his work on each successive scheme which he is asked to submit.

In practice, when the job is of good size and is proceeded with, the architect probably will not charge for the additional sets of sketches made. If, however, the client does not go ahead with the job after causing repeated sets of preliminary studies to be made, a serious loss will often be avoided if the architect is in a position to charge for each set prepared. He may wish to charge for but a portion of the sets prepared. It is nevertheless a very pleasant feeling to know that he is in a position to charge for all of them if it becomes necessary, in order to protect himself, that he exercise his privilege to do so.

There is manifestly no reason why the architect should not be paid for the work which he does, irre-

spective of whether or not the client decides to make use of the sketches and plans and complete the building operation. No architect can afford to prepare the many sketches and layouts desired and required by optimistic clients who believe that despite prevailing building costs they will, in some way and in their particular building operations, be able to secure moderate bids, unless he is to collect the value of the work done by him in preparing them. The law recognizes that this is so and, in the absence of a formal contract, allows him to recover the reasonable value of the work done. The architect cannot afford, however, to run the risk of the expense and loss of time and good will, incident to repeated misunderstandings with clients regarding payment for such preliminary work. By exercising the slight care necessary to secure a contract with the client all this difficulty will be obviated and the client will know, in the beginning, that the architect is to be paid for whatever work he does, irrespective of whether or not the work is utilized by the client thereafter and the building erected.

With respect to the plans and working drawings the situation is very similar. The architect must be protected, in the case where he is compelled to make various sets of plans and drawings, to carry out new ideas advanced by the client, or changes which the latter desires to have made, as the work advances. As in the case of the sketches, the architect should be entitled to charge for the different sets of plans prepared. The extent to which he may wish to exercise this privilege is another matter. As to that, he will be guided by circumstances.

Some architects agree with the client that they will prepare without extra charge such additional sketches, plans and working drawings as he may require. There may be cases when it is of advantage

to do this, but it is a very dangerous proceeding in all cases, except where the architect is dealing with a client of whose fairness of judgment and of intention he is assured. A client who is fairminded, and whose judgment is clear, will not expect an architect to agree to make unlimited plans for a single commission. A client who asks his architect to do this is likely to be one whom it will be exceedingly difficult to please and with whom the dealings of the architect will be unsatisfactory, whatever the extent of the concessions made by the latter.

Altogether too many people seem to regard the architect, and for that matter the professional man generally, as somewhat of an eleemosynary institution; one who is expected to make no charge for much of the service which he gives.

Ofttimes the architect who suffers most, by reason of a failure to arrive at a preliminary and definite understanding as to the amount of his commission, is he whose regular percentage charge is larger than the minimum charges specified in the schedules of the American Institute and of the chapters of the Institute in the states in which he practices. The rates given in the schedule of the American Institute and in the schedule of the New York Chapter are minimum rates and it is clearly stated that they are such. Nevertheless, even a client who has heard of the American Institute and of its schedules of charges, as most clients unquestionably have not, will often assume in perfectly good faith, in the absence of a definite agreement, that a charge by the architect in excess of the charges specified in the Institute's schedules is an excessive charge.

I had occasion recently to interview a business man of long training and large affairs, with reference to a claim due and unpaid to my client. The architect, in submitting his charge, had made some reference to the schedule of charges of the American Institute.

The business man in question, noticing this, had carefully provided himself with a copy of the schedule of the Institute and also with a copy of the schedule of the New York Chapter. As soon as our conference opened he made the point that the charge was exorbitant, in that it was in excess of the charges specified in these schedules, that the price to be paid had never been agreed upon specifically, and that for these reasons he would not pay the bill as rendered. As a matter of fact the percentage charge was entirely reasonable, and any experienced member of the profession would have recognized it as an entirely proper charge to be made by an architect of my client's standing, for work of the character involved. No amount of argument on my part could at first convince the owner that the architect was not acting improperly in charging a higher rate than that specified in the Institute schedule. The fact that the schedule specifically stated that the amounts specified therein were the minimum amounts which an architect should charge, and the fact that my client was regularly receiving fees on a much higher percentage, affected him not at all. He would acknowledge, after considerable argument, that the schedule as worded did refer to a minimum charge, and within the next few moments would again assume, with a complete lack of logic, albeit in entire good faith, that the schedule nevertheless did not contemplate the making of a higher charge. Finally, following repeated interviews and conferences, I succeeded in getting him to refer the matter to his counsel and it was then agreed that the charge as made would be allowed. The net result was that, in securing the acknowledgment of the claim, many hours of my time and of my client's time were taken up with interviews, arguments, correspondence and the like, and the owner, I firmly believe, is convinced to this day

that he was not dealt with in entire fairness. If an agreement had existed the question would never have arisen; the proper charge as made would not have been questioned; the rates of the American Institute would not have been introduced into the matter or have complicated the issue; the owner would have been satisfied and not disgruntled, and the architect would have avoided the loss of his time and the expense which he incurred for legal services.

In any discussion relative to the right of the architect to recover for plans which he has prepared it must be understood that, to enable him to recover, he must have made a proper delivery of the plans to the owner. Of course, if the owner waives such a delivery, or by some action on his own part prevents the delivery and makes it impossible, this rule would not bar the architect from recovering the amount due him. Unless, however, the owner waives or prevents delivery, or unless there be some contract between the owner and the architect, under the terms of which delivery need not be made, the plans must be delivered by the architect to the owner in order to enable the former to recover for their preparation. The phrase "delivered to the owner" is used in a relatively broad sense and, if the owner directs that they be delivered to someone else, as, for instance, to his contractor, the delivery of them in accordance with this direction will be considered as a delivery to him.

The main point to remember, however, is that the mere preparation of the plans in the office of the architect is not sufficient. The point is important because it often happens that, after the plans have been prepared, the architect either has some dispute with the client or perhaps becomes doubtful of the client's financial stability, and conceives the idea that he will demand payment for the plans, before de-

livering them. This is putting the cart before the horse, and might result seriously for the architect, in that the client could well refuse to make payment for the plans, on the ground that they had not been delivered and that payment had been demanded before delivery. He might even conceivably claim a definite breach of the whole agreement on the part of the architect, and so terminate the contract and relation between them, if the architect were to persist in his attitude.

In Massachusetts some years ago an owner tried to avoid liability by claiming that the plans had never been delivered to him. He had directed the architect to prepare the plans, and the architect had prepared a preliminary sketch. This he delivered to the owner, who kept it for some days, and after expressing his approval of the tentative scheme, as outlined, told the architect to proceed with the plans. He then had his builder call on the architect and take the completed plans and submit an estimate, based upon them. While the owner, in person, never received the plans, the Court quite properly decided that a proper delivery of them had been made and that the owner could not, under such circumstances, successfully claim non-delivery.

A word or two here on the distinction between the delivery and the acceptance of the plans may not be amiss. The layman might ordinarily confuse delivery with acceptance. In fact, they are quite distinct. The architect may deliver the plans and the same may be received by the owner, and yet the latter may not necessarily accept them. If the architect has lived up to his obligations and agreement, in the work which he was employed to do, the owner, after the plans have been delivered to him, cannot avoid his liability to pay for them by an arbitrary refusal to accept them, or by the claim that, because

he does not accept them, they cannot be considered as having been legally delivered. The architect, in such a case, can proceed with a clear conscience to collect the amount due him, and the Court will back him up and will not allow the owner to hide behind any such flimsy technicality. On the other hand, there are cases, not infrequently, where the distinction between delivery and acceptance becomes of prime importance, and where a failure to accept may well prevent the collection by the architect of the fee upon which he has counted. A typical case of this kind is that of the ordinary competition, where plans are prepared and delivered with the understanding that the architect who has prepared the successful plans is to be chosen. In such a case acceptance of the plans is necessary to enable the architect to recover for their preparation, except in so far as the competition may provide for some specific remuneration to unsuccessful contestants.

One of the phases of the architect's work which proves in many ways most exasperating is the making of the many changes in the plans made necessary by the demands of the client. It is natural that the first plans submitted should not absolutely meet the ideas and approval of the latter. The architect knows only too well how many suggestions for changes the client is likely to make and what a large proportion of them will probably be entirely impractical and impossible of adoption. Usually these very ones are those upon which the client has particularly set his heart, and it takes a considerable degree of both patience and tact on the part of the architect to convince him that they should not be forthwith incorporated in the plans. For some reason, the ordinary client is not able to "read" a plan or visualize an interior from the plan with any degree of accuracy. The inevitable result is that in

almost every case, after sketches have been approved and plans have been prepared and tentatively agreed upon, the client will direct that certain changes in elevation and lay-out be made. As a result, the plans must be redrafted and the specifications changed. Clients, as a class, realize very imperfectly the real expense in the time of the architect and of his draftsmen and organization which the making of such changes in the plans and specifications entails.

The architect, in the absence of any agreement on the point, is entitled as we have seen to recover the reasonable value of all services and time given. Nevertheless, as a practical matter, unless the matter has been specifically covered and unless the client understands fully the basis on which the work is done, it will be found that he will object strenuously to any substantial charge for changes and alterations, and that the fact that the changes and alterations are due to his own desires and directions will not alter his feelings in this respect. To prevent complications with respect to alterations it is essential that the architect should, in the first place, be sure that under the agreement with the client he has not obligated himself in any way to make changes without additional charge and, in the second place, see that some affirmative agreement on the part of the client is entered into, whereby the architect is assured payment for the extra work done.

Recently I was consulted in a case coming under the first of these possibilities. The client had written a letter to the architect at the beginning of their relationship, outlining in a general way his understanding of the terms upon which the work was to be done. The letter was received by a subordinate in the architect's office and accepted by him without the knowledge of the architect. The job in question involved the erection of an elaborate country home.

From the beginning, the client required repeated changes in the elevation, and in the plans and specifications as well, with the result that, by the time the work was completed, the architect had given to the job about three times the time and attention which would have been required had the work been proceeded with along the lines of the plans and specifications as originally drawn and prepared. When the architect submitted his bill for the additional time which he had given to the changes the client produced the letter which he had written, and which the office of the architect had acknowledged and accepted, and claimed that under the wording of the letter the architect could make no charge for any of the changes and the extra work which they had necessitated.

When the highly indignant architect submitted the facts to me, I was forced to advise him that, in view of the letter which had been written and the acceptance of it by the architect's office, the client was within his legal rights in taking the position which he did, however unethical and morally indefensible that position might be. If the letter from the client had been properly considered, and its legal effect appreciated, the architect could, in the beginning, have told the client that he would not proceed on the basis outlined and could undoubtedly, at that time, have secured the assent of the client to a stipulation that the architect should be paid for any changes asked for by the client. The architect has needed no second lesson. Since the foregoing occurrence he has made it a rule in his office to secure a definite contract, the provisions and effect of which he fully understands, and to embody in this contract, as one of its terms, the provision that he shall be paid the reasonable value of all work made necessary by changes in sketches, plans or specifications required by the client.

It is self-evident that a provision of this sort is quite in order. Of course, any changes which the architect may be required to make to correct inaccuracies in his preliminary work cannot properly be the subject of a charge. Where the client himself insists on changes, however, and thus is the direct cause of the extra work done, it is both just and proper that he should pay for the work, and no client, if the matter be properly broached in the beginning, can well refuse to agree to such a condition. On this point, as on all the other points covered by the contract between architect and client, the many terms which will be readily agreed to at the first interview or before the work has actually gotten under way, may, as the job develops, be exceedingly difficult to arrange. One cannot look ahead sufficiently to anticipate what complications may arise, what the mental reactions of the client may be, or how the attitude and feeling with which he at first undertook the work may be affected by unexpected increases in cost, changes in his own financial situation, possible friction between the architect and himself, or by any one of a score of like possible causes.

The philosophy of "do it fust," so pleasantly set forth by David Harum, applies to the dealings of the architect with his client, just as emphatically and pertinently as it does to any other business dealings. Get your agreement clear in the first place and do not trust to everything working out without complications or to fortune favoring you in case complications do arise.

There is a somewhat wide-spread misconception, I fear, on the part of the ordinary layman with respect to the right of the architect to receive adequate compensation for extra work performed by him. The contract should be so phrased as to make clear the extra compensation to which the architect is

entitled. Otherwise, there is likely to be a misconception of the amount to be paid to him and confusion, between the extra payment due him as such and the additional sum to which he is entitled in any event on the increased cost of the building, represented by the extras which have been added to the original contract.

It is often provided that, where the owner makes a decision requiring for its proper execution extra services and expense for changes in the drawings, specifications or other documents, the architect shall be paid the fair value of such extra service and expense. The intent of such a clause is to safeguard the architect against the possibility of doing a large amount of extra work, made necessary by the client's changes of mind, without adequate compensation.

Recently, I have had occasion to note that in the minds of some, including members of my own profession not perhaps closely in touch with building law, the intent and proper interpretation of this provision are not clearly understood. Where changes are made, increasing the cost of the work and necessitating extra charges by the contractor, the architect naturally is entitled to receive his additional commission, in accordance with his basic fee rate, on the cost of the additional work. It is claimed by some that this is all that he is entitled to receive and that, by receiving this additional amount, he is fully compensated for the work done and has received the full payment to which he is entitled.

This is, of course, not correct. The basic rate of commission is one thing. The extra compensation contemplated by the foregoing clause is quite another. It is a charge outside of, and in addition to, the commission on the added cost of the work.

The architect is entitled in any event to receive the agreed basic rate of commission on the total cost

of the job. This is so whether the job costs \$5,000 or \$5,000,000. If the building is erected as originally projected and designed, with no changes made during the course of construction, then the architect can only receive the basic commission of 6% or 10% or whatever the parties have agreed the amount shall be. If changes from the original plans are ordered, however, by the client, then the architect is at once compelled to expend additional time and study on the changed problem thus presented to him. He is compelled to study the new layout and pay out additional monies for the new drawings and specifications. He must himself give, and have his assistants give, more time than would have been required if the work had proceeded without change.

For all of this the architect is entitled to compensation—to compensation in addition to and distinct from the compensation which accrues to him under his basic charge on the final cost of the work.

A client comes to an architect and employs him to make plans and specifications for a \$1,000,000 building. The architect does so. The rate agreed upon is 6%. After the plans are completed, the owner changes his mind regarding his requirements, and directs that the building be radically changed in design or layout, and this is done and new plans and specifications are prepared. The altered building costs \$1,500,000. The architect is entitled to his 6% on the additional \$500,000 of cost, but he is also entitled to an additional amount for the changes made. He has done more work, and been put to greater expense and larger overhead charges and lost more time, than would have been the case if the owner had originally ordered the \$1,500,000 building and allowed the architect to push it through to completion without change. The architect is entitled to

compensation for the extra work and expense involved.

It is the old case of "two bites of the cherry," the total cost of the building corresponding to the cherry. The architect is entitled to his commission on the cherry, but he is also entitled to his compensation for the extra bite.

A problem which will confront every architect in active practice, in the matter of extras and changes, is that of the "know it all" client—the client who insists that certain details of construction be carried out in accordance with his own ideas rather than in accordance with the ideas and judgment of the architect. Such a situation may be of a kind calculated to cause irritation only. Again, it may be such as to be far more serious and to carry with it real danger of loss to the architect and to the client, as well.

The client may desire ornamentation which is entirely unsuited to the building, but which does not in any way affect its safety or utility. In such a case, the architect, if he be willing to swallow his pride, can complete the job with no harm done, unless, of course, the fancy of the client has been so extreme or fantastic as to ruin the work and so bring discredit upon the craftsmanship of the architect.

If, on the other hand, the client undertakes to force changes which are essentially structural, rather than of design, a different issue is at once presented. Here, the architect cannot afford to waive his position or resort to compromise. To do so may, and in all probability will, involve him in serious difficulty. It may mean, at the best, a law suit to secure his fee from his client, and it may mean a serious claim against him for damages or even a charge of criminal negligence, if the building be one of a public or semi-public character. If the architect allows a

type of construction to be followed in such a building, knowing that it is improper or unsafe, but deferring to the insistence of the client, and any member of the public is injured as a result of the method of construction followed, the architect may well be held responsible. No architect can afford to take any such chance or to compromise in any way where actual structural elements are involved.

If the client insists that his own views be followed in changes involving structural work or the reputation of the architect as a competent designer, the architect should retire, if any danger to the public be involved. He should, in any event, notify the client, without fail, that, in view of the client's insistence in dictating certain details of the work, the architect will not be liable for any difficulties which result from the work being done in the manner demanded by the client. The architect thus puts himself at once on record as to the proper method of construction, and makes it impossible for the client, at a later period, when the work perhaps has not been approved by the proper authorities or proves defective, to claim that the architect has been incompetent or negligent and, on this excuse, refuse to make payment to him of the fee which he has earned.

In a case in which I was recently consulted an architect prepared plans and specifications for a business building in a large city and, in accordance with proper practice, provided for fireproof construction of partitions and the like, of a type which he knew would be proper and approved by the Building Department. The client, whose sole thought apparently was to save money, took the position that the construction of the architect was unnecessary and insisted on a different and non-fireproof form of construction. The architect protested, but to no avail. The client again insisted that he knew best,

and that the work must be done in accordance with his decision. The architect then did exactly the right thing. He notified the client that he could not, and would not, be responsible for any of the work other than that done in accordance with his directions. The client went ahead, regardless of the architect's advice and protest, and, as the architect had anticipated, the Building Department refused its approval. The architect asked for his compensation for the work which he had done, and the client claimed that, because the work had not been approved by the Department, no recovery could be had.

Under the circumstances, the client cannot possibly maintain this position. The architect had put him "on notice" and is entitled to recover the fee which the services rendered by him have earned. If, however, he had failed to notify the client, he might well have waived his rights by proceeding with the job, without protest or notice, and would certainly have placed himself in a far weaker position than that which, thanks to a little care and a few short letters, he now happily occupies.

At just what point the line is to be drawn between desires of the owner which the architect can afford to humor and those with respect to which he must take and maintain a definite stand, must be decided upon the facts and circumstances involved in each particular case. If the client cannot be satisfied without meeting his wishes, if he cannot be convinced of the correctness of the architect's position and of the incorrectness of his own, the architect must decide whether he can safely make the changes demanded, without danger to his reputation or monetary loss or possible claims on the part of others.

So far as the injury to the reputation of the architect, by reason of changes in design alone, is concerned, the architect can decide the question without

legal advice. His only problem in such a case is whether, by meeting the wishes of his client, he will so change the appearance or layout of the building as to make it imperfect or ridiculous architecturally, and so bring discredit upon his work. If he desires to compromise on this issue for the sake of the fee involved, he can do so with a fairly accurate understanding, based on his own experience, of the damage if any which may result from his action.

When, however, the matter is one of structure, involving either the safety of the building or the possibility that it may not comply with the requirements of local building departments or rules, no compromise, as we have seen, can safely be indulged in. The issue is clear-cut and unavoidable. The safe course is to notify the owner that the architect insists on the work being done in the manner which he prescribes, and that he will not be responsible for any work not done in accordance with the plans and specifications as he has prepared them. This position may be taken tactfully but, tactfully or not, it must be taken and adhered to, unless the architect is prepared to "take a chance" and risk a more serious rupture with the client, in the future, and the probability of being called upon to defend other claims for damage. Far better a firm attitude in the beginning and the severance of professional relations, if necessary, than the incurring of responsibility for work which is unsafe or not in accordance with legal requirements or the recognized rules of sound practice.

A phase of the ordinary high-class job, which is analogous to the extra work proposition, is that having to do with work of a special and extraordinary character. The architect's commission is based on the assumption that the job is to be of the ordinary kind and that no special work, requiring an unusual

degree of care in design or execution, is to be incorporated in it. In repeated cases, however, this is exactly what is done, and in any thoroughly high-class and extensive piece of construction, especially in the cases of country homes, special work will be called for in the design and installation of panelling, cabinet work, *torchères* or other similar items. This work requires, naturally, a special degree of thought and a special degree of skill, and it is fair that the architect should be paid on a higher percentage basis for items of this character than for the ordinary design and construction. I have in mind, among others, two rather interesting examples of how the architect may, unless he take proper precautions, suffer loss in this way. Each of these cases had to do with a country home, costing a large sum of money, and recognized as an extraordinarily effective and high-class piece of work.

In the one case the item as to which the controversy arose was a specially designed door and doorway. The client desired a very particular and unusual effect and the architect, at the expense of a great deal of time and personal study and attention on his part, had worked out and incorporated in the plans a design of unusual attractiveness and excellence. After the architect's work had been done, the client, for some reason, decided that he would not pay more than the ordinary commission for this special work, and the architect, as matters stood between them, was unable to force him to do so. The architect's office had been foolish enough, in this case also, to allow correspondence to stand on the record, which precluded any extra charge for the work done.

The second example which I have in mind arose in the course of the construction of the home of a man widely known and of high standing in his community. When the work was under discussion in the

first place, the client, calling at the architect's office and noticing a rather choice old Chippendale cabinet, stated to the architect that he would like to have the woodwork in his house finished in a similar manner. What he had in mind, and what the architect naturally understood, was that he wanted to have the wood-work made to appear as nearly similar to the antique as possible. The architect remembered the client's request, gave special attention to the wood-work, and achieved what he considered an unusually successful result in the finish. The client, after a critical inspection, decided that the new wood-work was not entirely comparable to the work of Chippendale and, absurd as it may seem, insisted that the architect had not fulfilled his agreement and that he was entitled to exactly the same tone and the same "patina" on the woodwork in his house as that which the mellowing of age had given to the original piece. The result was that the client sincerely, but absolutely without cause, conceived a violent prejudice against the architect and refused to make payment of the many thousands of dollars which were still due the latter.

It was at this stage of the proceedings that I was brought into the matter. I spent many days listening first to the curses of the architect directed against the client, and then to the curses of the client directed against the architect, and finally was able to induce the client to make payment of the amount in full. This was not accomplished, however, until the architect, as a result of the misunderstanding, had lost a perfectly good and valuable client, and until he himself had given, and I had given, to the matter, attention and time representing a considerable amount of money. All of the difficulty in these cases might have been avoided quite easily, and the good-will of the client retained, if the architect had had a contract

with the client properly drawn and executed, and had been more definite in his conversation and dealings with him. The case of the doorway and similar cases emphasize anew, also, the importance of developing a system of office organization and conduct which shall avoid, as nearly as may be, the danger of some employee innocently committing the firm, by letter or otherwise on points of importance, involving loss to the architect and calculated to breed misunderstanding and ill feeling between the latter and his client.

CHAPTER VII.

THE TITLE TO THE PLANS.

General misconception of architect's rights in plans.—The legal rule.—The protection of the architect by contract, patent or copyright.—The rights of third parties.—“Design patents.”

If one ask fifty architects, chosen at random, where the title to the plans rests, in the absence of an agreement with respect to their ownership, ninety per cent of those to whom the question is put will promptly and with conviction answer that the plans belong to the architect. If one tells this same ninety per cent that they are wrong and that, under such circumstances, the plans belong to the client, probably half of them will explain to you that, with all due deference for your legal wisdom, they know better. There is no point as to which architects, as a whole, have a more absolute or tenacious misconception.

The law is, generally, that, in the absence of a contract provision to the contrary, the plans are the property of the client who has ordered and paid for them. If a different result is to be arrived at, it must be done by agreement between the parties.

The misconception of architects on this question is due largely to the fact that the rules of practice of the American Institute have long provided that the plans are the property of the architect. The fact that the rules state that this is so does not, however, make it a fact. Even if it be established that it is a custom of the profession that the architect is the owner of the plans, the client is not necessarily bound

by this fact, unless it can be shown that he had cognizance of it. For some years before the issuance of the Standard Form of contract between architect and client, the standard contract between client and contractor provided that the plans belonged to the architect. The weakness of this provision, as already indicated, lay in the fact that the architect was not a party to the agreement. There was consequently no privity of contract, as it is called, between the architect and his client on this point. The Standard Contract between the architect and client now provides that the plans, as instruments of service, are the property of the architect. If a contract with the client, embodying a provision to this effect, is entered into, the ownership of the plans will remain in the architect and the latter will be protected, accordingly.

The architect must remember, however, that this ownership is not a matter of divine right, but of contract, and see to it that his rights are properly recognized and made clear. The point may be of considerable importance, especially in a case where the client becomes dissatisfied and employs another architect. The latter, if not strictly ethical, may, at the request of the client, attempt to proceed with and complete the work in accordance with the plans prepared by his predecessor. If the latter can establish the fact that the plans are his property, he may be able to protect his rights and prevent the use of his ideas without proper compensation to him, when otherwise he might be helpless.

Another interesting problem is that dealing with the rights of third parties in the plans. How far can the architect protect himself from the use of the plans by others, and how far can third parties make use of them without his consent? The answer to these questions will depend upon the special circumstances and facts in each case.

As a general rule, it may be said that when a publication of the plans has been made, they have become public property and the rights of the architect with respect to them, so far as the public is concerned, is at an end. By publication in this connection is meant a legal publication. It does not mean publication in the sense in which a book is published, but publication in the sense of making public. A filing of the plans, for instance, with a Municipal Department, where they are open to inspection as public records, may be such a publication.

Under certain circumstances, a plan may be copyrighted or even patented. As a rule, no patent protection is possible. To make it possible, the plan must contain some new and unique ideas—some special feature of construction or design which may be made the subject of patent claims. A plan may be more readily copyrighted. The value of the copyright in the ordinary case is more a moral value than a legal one. The statement upon a plan that it is copyrighted will sometimes be of material aid in discouraging any unscrupulous use or copying of the plans by other architects or by third parties. If the plans are such that valid patent or copyright protection can be and is secured, the publication of the plans may be made without waiving the rights of the architect.

In a rather interesting case in my practice an architect developed a unique and clever plan for a certain type of semi-public building. The plan combined unusual elements both of utilitarian and artistic merit, but no patent or copyright protection was applied for. After the architect had made the preliminary sketches, been responsible for the completion of the plan and completed the drawings, the client paid him for the work done up to that point, and then turned over the work to another firm of

architects, who proceeded with it and supervised the erection of the building. I do not know whether these latter architects were aware of all the facts, and prefer to assume that they were not, in view of the ethics involved. The net result unquestionably was, however, that the architect whose talent and ability was responsible for the idea received a very modest sum for the sketches and plan, and that the chief compensation was received by the architects who supervised the construction, in accordance with the plans which my client had made. There was nothing which the latter could do as between himself and his client, as he had neglected to make any contract or secure any memorandum covering the relationship between the client and himself. In the absence of an agreement, the law governing the case provided that the plans belonged to the client and not to the architect, and the client, having paid for the plans, had consequently a legal right to turn over the work of supervision to the other architects. If my client had secured legal advice and a proper contract in the beginning he might have been protected, and would not have laid himself open to the treatment which he received.

Special designs, for lighting fixtures, hardware and the like, may be made the subject of what are known as "design patents" and thus protected.

CHAPTER VIII.

SUPERVISION.

Responsibility of architect for reasonable skill and diligence.—Delegation of authority.—Securing and checking statements of quantity and unit prices.—Negligence of the architect.—Directions by owner direct to contractor.—The architect as arbitrator.

The average architect would probably be scandalized if he were told that in many ways his profession is similar to the legal profession. His natural off-hand impression is that the two professions are so wide apart as to have no substantial similarity to one another. As a matter of fact, the architect, in placing himself before the public as a practicing member of his profession, assumes exactly the same responsibility for reasonable skill and care in the practice of his profession, as that which rests upon a lawyer or, for that matter, upon a physician.

Like the lawyer, the architect is acting in a position of trust and confidence; like the lawyer, he is the authorized agent and representative of his client, within the scope of his employment; like the lawyer, he is assumed to possess, by reason of his calling, special skill and ability in the practice of his profession; like the lawyer, he is under definite obligations to the public, to practice his profession with **proper care and diligence**, and in all work relating to the construction of buildings used generally by the public to conduct himself with the reasonable skill which he is assumed to possess. It is not necessary that he be possessed of extraordinary skill, but he must at least be possessed of sufficient ability and

training, so that he will be generally considered by other architects as possessing a reasonable degree of professional knowledge and skill. He must, also, as a lawyer must do, gauge his skill and attention by the necessities of the case which he is called upon to handle. If he undertakes any work, his undertaking it may amount to an implied representation that he is capable of carrying it out and of securing the result desired. In designing country houses, certain elements of skill will be demanded, which will not be called for in ordinary city residence or commercial work. On the other hand, the city practitioner is expected to give attention to city ordinances, building regulations and the like, to a much greater extent than does the architect practicing in the country. In defining reasonable skill and attention, as applied to the particular work involved, the nature of the services involved and the circumstances under which they are performed must be taken into consideration.

It is natural that the supervision side of the work should be the one which, more than any other, creates situations as a result of which the architect is subjected to claims, by the client, that the architectural services have been negligently performed. Many clients have a totally erroneous idea of the connotation of the word "supervision," as applied to the duties of the architect.

It is important that a clear distinction should be drawn and consistently maintained between "supervision" and "superintendence." In the mind of the ordinary client these terms would be used interchangeably. It is the duty of the architect, both to himself and to his client, to see to it that the latter understands the connotation of each of these terms as applied to the building operation.

Supervision means the periodic examination of the work as it progresses; the keeping in touch with it

and the checking in a general way from time to time, of the work done, both as to quantity and as to quality. Superintendence is a much more inclusive term. It embraces all of the services of supervision, and other services not called for when supervision alone is specified. If an architect undertakes to superintend a job, he is going further than he is ordinarily called upon or expected to go. Superintendence carries with it the obligation to check up the work in a much stricter sense and in effect to act as resident superintendent. This does not mean that the architect must himself reside at the job, but it does mean that if he does not do so, a "clerk of the works" shall superintend the work done, by practically daily attendance. Unless the architect is willing to assume the added expense which superintendence entails he must be careful to stipulate that the "clerk of the works" is to be paid by the client. There is an added advantage in such an arrangement, in that, when the client bears the expense of this service, the clerk of the works acts as his agent. If he exceeds his authority therefore, or is negligent in the performance of his duties or makes a wrong or unauthorized decision, the architect cannot be held responsible for his acts or omissions.

If architects would make a concerted effort to bring home to the layman a realization of the fundamentals of supervision and superintendence and the respects in which they differ, they would be accomplishing much more than most of them realize, in the way of forestalling misunderstanding and disputes.

The contract should make this difference clear and provide that if the service desired is superintendence, rather than supervision, a clerk of the works shall be employed by and at the expense of the owner. A few moments given to explaining this situation to the client will be time profitably spent.

A surprising number of clients seem to feel that the agreement of the architect to supervise the work is tantamount to a covenant on his part to personally overlook the placing of every stone and every detail of construction. A litigious client helped to clarify this question in New York a great many years ago. The front parlor windows in the building which he had ordered constructed were so placed that they were between two and three inches higher than those indicated on the plans, and the same distance higher from the floor than the rear parlor windows. The reason for the difficulty was that the masons had not properly followed the plans and specifications. It appeared that the architect had been diligent in his attendance at the job, and that no fault lay with the drawings and specifications. The client claimed, in effect, that the mere existence of the difficulty was proof of the negligence of the architect and that his failure to detect the difficulty constituted a negligent supervision by him of the work, to such an extent as to render him liable to the client for damages. The case was finally carried to the Court of Appeals of New York, argued at length and decided in a rather detailed opinion in favor of the architect. So much expense and controversy may a matter of two inches cause. The Court went to the root of the matter, when it said that the architect was not under any obligation to measure the lumber and make actual measurements on the ground, in the erection of the building, that the contract with the mason provided that the latter should "lay out" his work, and that the difficulty was not such that the knowledge and skill of a good architect should at once have detected it.

In another very similar case it was claimed that the architect was negligent, in that certain of the flues were not sufficiently large. The client sought to

defeat all recovery of compensation by the architect, on the ground that, if the architect had furnished proper plans and superintendence, the flues would not have been defective, and that the contract was what is known as an "entire" contract, that is a contract such that a breach of any part of it must be considered as a breach of the whole. The Court, as was proper, allowed the client compensation for the faulty flues, but it refused to countenance his attempt to escape the payment for the balance of the work. It quite properly pointed out that an architect is not bound to spend all of his time at a building which is being erected under his care, and that he is not in any sense an insurer of the perfection of the plumbing or carpentry or mason work, and is not expected to watch the turning of every screw and the driving of every nail.

The above reference to the driving of a nail, brings to mind a recent case in which I represented an architect in a claim against a man rather well-known in business and public life. The architect had built a really beautiful home for the client, but the latter was dissatisfied. About a year after the house had been completed and occupied, his bill remaining unpaid, the architect pressed the client for payment, and the latter submitted a long list of grievances. Prominent among these was a harrowing history of how the bathroom pipes had leaked with resultant damage to ceiling and hangings. The architect very decently sent down one of his head associates to look into the complaint, and it then developed that the whole trouble came from a leak in a leaden pipe, due to the fact that a nail, in the course of construction, had been driven through it. When the case came into my hands, the client, in a number of successive interviews, was most vehemently and sincerely outraged at what he termed the incompetence and the neglect

of the architect in allowing such a situation to arise. He failed utterly to grasp the fact that no architect, under the most stringent rule, could be regarded as under an obligation to see that every nail driven reached its proper mark and that none was so deflected as to cause damage. He insisted that he had employed the architect to supervise the work and see that it was done properly, and that in fact it was incumbent upon the architect to so supervise the work as to guarantee that no occurrence of this sort should occur; that each detail, important and unimportant alike, should be carried out literally and absolutely, in accord with the specifications and plans and without a hairsbreadth deviation therefrom. Finally, the client became sufficiently reasonable, so that he made payment of the architect's account. He is still convinced, however, I am sure, in his own mind, that the architect was grossly negligent in failing to see that particular nail driven in the first place, and if not, then was certainly negligent in failing to check up the nail, after it had been driven, and before the floor had been laid. An instance of this kind appears, of course, laughable and in many ways a triviality. As a matter of fact, it may mean, as the case cited meant, a loss of a considerable amount to the architect in time and expense, and a much more serious loss, perhaps, in the dissatisfaction of the client.

A somewhat similar incident came to my attention about a year ago. The architect, in designing a country house, had provided outside blinds equipped with a standard form of hinge and lock, in use generally throughout the locality in which the house was erected. About six months after the house had been completed the blinds were torn from their hinges by the force of the wind. It was then found that to prevent any possibility of a recurrence it would be

necessary to substitute a heavier form of hinge and catch. The architect gladly had this done, giving considerable time, both himself and through his organization, to this and other similar details, in an effort to give the utmost service to the client. The latter was not to be appeased, however, and, for a time, held up the payment of the architect's bill in toto, claiming that the architect should have known, in the first place, that the hardware used was not sufficiently strong, and that in the second place, if he had given proper supervision to the work, he would have gauged more accurately the force of the local storms and seen to it that hinges sufficiently strong to resist them were employed.

Another thought, all too generally held by clients, is that supervision by the architect means supervision by him personally at all times.

It is and has long been a firmly established rule, and the law of England and of this country, that an authority founded on the personal equation and dependent for its exercise upon the discretion and judgment of the one to whom it is granted cannot be delegated by the latter to another.

This rule is based upon good sense and good law. If you employ a certain lawyer to draw your will, because you believe that he is especially skilled in that branch of law, you would not expect him to delegate all responsibility in the matter to another. In the case of the employment of a physician, the personal element is even more accentuated, and so in all cases of professional employment the employer depends—to a greater or less extent, but somewhat, always—on the personal judgment, character and ability of the professional man whom he employs.

It is equally manifest, however, that there are many details of a professional man's duties which can be delegated to his assistants without in any

way endangering his client's interests. The full scale drawings, for instance, carrying into effect the scheme evolved by the architect, can be turned out by proper draftsmen, without the client's interests suffering because it was not the hand of the architect that actually guided the pencil. Even in the case of the will, if the lawyer asks a competent clerk to prepare a draft and then personally passes on it and makes corrections, when necessary, the client's interests are fully protected. The completed work represents the judgment of the lawyer and not simply that of his clerk.

And so, there have grown up in the law certain well-recognized exceptions to the ordinary rule. Generally speaking, where an act is purely ministerial, as distinguished from discretionary, it may be delegated to another. The copying of drawings and the transcribing of testimony are obvious instances of such ministerial acts. Another exception to the rule is in the case of an established custom or trade usage.

There is such a custom and usage in the architectural profession. The early decisions in England failed to recognize the common sense of the matter, as distinguished from the strict letter of the law, and held that an architect or engineer must himself personally make measurements and computations and attend to all the similar duties entering into the preparation of plans and specifications and the supervision of the work. Gradually the rule was broadened, however, and the necessity and justice of a more liberal construction realized. Today as the law has developed and the custom of the profession has become established, the architect may turn over to others practically any of the details of his work, the preparation of sketches, plans, and specifications and the supervision of the work, always

provided, however,—and this is of fundamental importance,—that he retain the general oversight and control of what is done, and remain the directing and over-seeing mind and force.

While the practicalities of the situation have been recognized in this way, there are many cases where the architect cannot safely delegate his powers to another. He cannot take advantage of the liberality of the rule in its application to his profession to slough all real responsibility. The client in the ordinary case depends upon his artistic ability and expert knowledge. He must be diligent to see that, in delegating work to others, he yet retains such oversight and control that the design made and work done properly represent his own conception and judgment. He may select competent designers but the designs should take form under his guidance. He may employ competent supervising assistants but, if the work is not properly supervised, he must respond in damages to the owner for all defective work resulting from the improper discharge of their duties by his subordinates.

Nevertheless, it is evident that no architect with a large practice and busy office can himself personally supervise every job during all of its stages. Unless the client specifies specifically that the architect himself is to attend to the supervision work, therefore, supervision by the architect, through subordinates or associates in his office, of those details which he cannot personally supervise, will be sufficient and be legally considered as supervision by the architect himself.

As a practical matter this very often displeases the client, however, and I imagine that every architect has encountered that irritating case of the client who thinks that the architect has nothing to attend to, other than the particular job in which the client is

interested. This is a situation in which, as a fellow professional man, I can truly sympathize with the architect. At the same time, it is one which cannot be disregarded, but must be so handled that the client may be satisfied and his interests properly taken care of.

About six months ago, a particularly aggravating case came to my attention. A client of mine in New York was architect of a very large private home in the South. The client, a man of considerable wealth and standing, was, nevertheless, arbitrary and unreasonable to an unusual degree. The architect had, I suppose, in this particular case given fifty per cent more personal time and attention to the sketches, design, specifications, drawings and supervision, than he would be called upon to give in any ordinary case. He made trips to the South and personally looked over the building on a number of occasions, and he had had exceedingly competent men from his organization assigned to the job and giving splendid supervisory service in connection with it. Unfortunately, the client and the architect, through some misunderstanding or other reason, failed to meet, on one or two of the occasions when the architect inspected the work. The client became unreasonably annoyed, or claimed to be so, and refused to make payment of the architect's fee, claiming that he was entitled to the personal supervision of the architect, that the latter had merely sent a few "clerks" to look over the job, and that he would not make payment of the amount due. The result was that we were forced to bring suit in order to collect the substantial fee to which the architect was entitled.

It is a great injustice that an architect should be forced to go into court in a matter of this kind. Here again, "definiteness" seems to be the obvious remedy. If the client and architect have a definite understand-

ing in the form of a contract and if it be understood that "supervision" is not necessarily to be construed to mean supervision by the architect personally, but merely supervision by his office, through a competent representative, then the client will realize that he cannot sustain any such claim as that made in the case to which I have referred, and will make payment of his just indebtedness for the service rendered. In general, the question of whether the architect has been negligent—whether he has shown reasonable skill and diligence in the performance of his duties—is a question of fact, rather than a question of law. As such, in case of legal proceedings, it will in the last analysis be determined by the jury, upon all of the facts presented.

I have already referred to the importance to the architect of his acts as the agent of the client. The architect is probably more concerned with the matter of supervision than with any other phase of this agency relationship. As a supervising architect he will be called upon repeatedly to act for the owner and as his representative in matters involving large sums of money, to construe the extent and scope of the agency which has been granted to him, and to pass upon questions of vital interest to the owner and to himself.

Every architect, in the course of his practice, is confronted frequently with a situation where he believes a change in the specifications or plans is advisable. No matter how clear he may be in his mind that it is in the interests of the client that the change be made, let him beware of assuming that his authority, as supervising architect, carries with it any right to alter or change the conditions of the building contract. The architect in one case, for instance, in authorizing certain extras told the contractor to "go ahead and do the work" as the archi-

tect directed and that the contractor would "be paid for it." If the owner does not back up the architect, in such a case, no amount of statements of this character, no matter how definite they may be, will enable the contractor to collect from the owner for the extra work, if the contract provides, as is usual, that any additions to or deviations from the plans or specifications shall be approved in writing by the owner. The result may well be the possibility of suit by the contractor against the architect and general misunderstanding and difficulty.

Many years ago, a building was being erected in the state of New York, under specifications which provided that a certain cement should be used, mixed with equal parts of good sharp and dry sand. There was also the provision similar to the provision so commonly inserted at the present time, that all disputes regarding the true construction of the specifications should be decided by the architect, and that the latter's decision should be final and conclusive. The contractor, in the course of the work, made a change in the cement mixture specified in the agreement. He acted, apparently, in good faith, and submitted proof that he had been told by the superintendent of the job to mix the cement as he had mixed it, and that the architect had directed him in writing to follow the instructions of the superintendent in every particular. The Court of Appeals held that, under the terms of the contract, no change in the mixture could be authorized, without the consent of the owner. To have allowed this to be done would have, in effect, allowed the architect to make a new contract for the owner. It is well settled that the employment of an architect, to supervise or to superintend the erection of a building and to see that the contractor properly performs his contract, does not

vest in the architect any authority to make any new contract, in the stead of the old.

In considering the subject of supervision we must not lose sight of the extreme importance of another phase of the architect's duties as the representative of the owner in the building operation. I refer to the issuance of certificates and the proper checking of requisitions and of statements of materials used and work done. Manifestly, there is no phase of the whole building operation which more directly and vitally affects the pocket-book of the owner, and yet it is, I am afraid, often true that, in many instances, the architect gives inadequate thought and attention to this part of his work. Some architects are inclined to treat it as a purely routine matter, and to accept the statements submitted by the contractor, prepare their certificates on the basis thereof, and issue them without adequate auditing or appreciation of the importance of the step taken. There has recently been a very refreshing change in this respect, and a much more general appreciation of the importance of a more business-like administration of this part of the architect's duties.

This has recently been impressed upon me anew, by a case in which I have represented the architect. In this case, if it had not been for the vigilance of the latter, the business-like organization of his office and his insistence upon having all details as to materials and work checked and in proper form, before authorizing payments to the contractor, the owner would have suffered a loss of a very large amount. The architect had endeavored to guard against all contingencies and yet much of the trouble to which he was put, to defeat the unjust claims of the contractor, could have been avoided if the construction contract had been in a slightly different form. The contract set forth estimates of the various component parts of

the work and provided for payments to the contractor of specified sums for each component part, such as excavation, masonry, and the like. This left it open to the contractor to lump his largest charges in the items for which the early payments were to be made. In fact, we found that he apparently had done this very thing, and that he had added practically all of his prospective profit on the job to the earlier items. The result was that, if these items had been paid in full, the contractor would have received in the early payments the major part of the profit which he expected and would have had little interest in the balance of the job. The architect, fortunately, realized the troublesome possibilities in the situation and took care to analyze the estimates submitted. He insisted on the submission by the contractor of statements of quantities and prices covering each component part of the construction, as the work progressed. He checked these quantities and verified the market prices in connection with the items on which the quantities were submitted. He soon found that the contractor was about to secure most of his profit and overhead on the first few items for which he had submitted statements. He immediately took up the matter, with such good effect that he was able to hold out a sufficient sum to safeguard the owner and to compel the contractor to complete the work eventually, without loss to the client. It is evident that if the contractor sees that he can secure all of his profits and overhead on the earlier items, due to the fact that these are in excess of the true valuation of the work actually done, his interest in the remaining items involved in the work is small. In fact, in the case to which I have just referred, the contractor, before the job was completed, went into bankruptcy. If the architect had not acted as promptly and as vigorously as he did, the owner

would have been left with a half-finished work on his hands, substantially all of the contractor's profits would have been paid to him, and the owner would have been faced with the necessity of completing the work, with less money in hand for this purpose than would suffice to pay the sub-contractors and material-men and finish the details left uncompleted by the main contractor.

When, following the selection of the architect and contractor, the latter is asked by the architect to submit an estimate of the cost of construction of the component parts of the building, such as excavation, masonry, timber work, trim and the like, the contractor, in submitting this estimate, will almost invariably be found to submit it in lump sum items, without giving quantities and prices. If one stops to think, and analyzes the legal and practical effect of handling the matter in this way and of accepting estimates so submitted, without additional safeguards on details, the danger of such a proceeding will be obvious.

To eliminate this element of uncertainty and risk, the architect will do well to insist, in any work of importance, on the submission of quantities and prices, as to each item and component part. He should then take the quantities and investigate and verify the current market prices on those items, as to which the various quantity estimates are submitted. He should make sure that the contractor, under the agreement, is called upon to submit each month, with his application for payment, a similar list of quantities and prices. The matter of extras must, of course, be considered and the agreement should provide for additional quantities, made necessary by extra work, on the basis of the quantities and prices originally approved and accepted. Payments can then be made on the basis of the agreed quanti-

ties and prices, as installed in the building and as approved by the architect. As a phase of operation, a more detailed explanation of the approval would come from the general superintendent and, if a clerk of the works were employed, his report and approval would be secured in the first instance. By following this plan, the contractor will be paid for the true value of the work done, the reasonableness and accuracy of the quantities and prices will be duly checked and known, and the danger of the contractor prematurely securing all of his profit and overhead will be eliminated.

There is another reason, and one more directly affecting the personal interests of the architect, why he should exercise adequate care in checking the estimates and requisitions of the builder and the work done, before issuing certificates. The saving to the client, and the protection afforded the interests of the client, by careful attention to this side of the architect's supervisory duties is obvious. This is, naturally, important and part and parcel of the obligation which an architect owes to his client. Every conscientious architect will appreciate this fact and realize that, as the trusted agent of the owner, it is incumbent upon him to overlook no reasonable means of protecting the latter, in supervising the work done and in checking the payments which the owner makes to the builder, in reliance upon the certificates of the architect. Aside from this, however, the architect may, if he fails to give proper care to this matter of certificates, incur a direct personal responsibility. If the architect gives certificates to the builder, exceeding the sums which should be certified under the contract, it is quite possible that he will be called upon to make good to the owner the loss occasioned the latter by such neglect on the part of his representative.

In pointing out the necessity of a careful survey

and checking of materials and of all of the component parts of the building operation, I have referred to the case where the contractor endeavored to secure all of his profit by including the major part of profit and overhead in the earlier items included in his estimates. It is in just such a case that the architect might easily incur personal liability and a substantial loss. If, by lack of reasonable precaution or thought, he certifies amounts larger than those which he should certify, and the builder then becomes insolvent or goes into bankruptcy, the owner may be entitled to recover from the architect the amount of the loss which he has suffered by reason of the over-certification.

There would seem to be no reason why the same rule should not apply where the neglect of the architect consists, not so much in over-certification, as in a failure to perceive the fact that the estimates originally accepted are improper and unfair to the owner, in that the items of cost are not distributed properly with respect to the various component parts of the building, but are so arranged as to give to the contractor the major part of his profit on the earlier items of construction. It is possible that the architect might defeat recovery by the owner in such a case, by the plea that the architect was acting in the quasi-judicial capacity of arbitrator, and that he was, therefore, entitled to the certain immunity from damages, based on errors of judgment or even neglect, which attaches to him as such and which is referred to hereafter.

The architect is familiar also with the usual contract provision, whereby the payments to the contractor are made dependent upon the issuance of certificates by the architect. Construed literally, the provisions on this point, as often drawn, might be construed to mean that the contractor could never

recover, without showing the issuance of the certificate due him. It is quite possible that, if the contract clause is so drastically worded as to provide that the determination of the architect, as to the issuance or non-issuance of certificates, may not be questioned or impeached in any way, either on the ground of fraud or collusion or bad faith or otherwise, the courts would hold the issuance of the certificate to be an absolute condition precedent to any recovery by the contractor. Such a provision has, in fact, been employed and countenanced by the courts. It is obvious that an agreement of this sort is, in the ordinary case, inequitable and unfair and that it should not be employed, except in exceptional circumstances. Such is a case where there is good reason to suspect the intentions and character of the contractor, or where, for some other special reason, it is necessary to vest the architect with absolute discretionary powers.

In order to do justice to both parties and to apply common sense, in construing the terms of the contract, the courts have generally determined that the failure to produce the architect's certificate will not, in certain cases, be fatal to a recovery by the contractor, even if the contract provide in general terms that no recovery can be had by the latter, until the certificate be produced. The courts will, accordingly, excuse the failure to produce the certificate, and relieve the contractor of the necessity of so doing, where they find the existence of fraud, or collusion, or bad faith, or negligence so gross as to amount to bad faith. They will protect the contractor, similarly, where circumstances, or an accident beyond his control, or the passing of time (not including delay for which he is responsible), have made the performance of the contract impossible. They will intervene, also, where the owner prevents the con-

tractor from securing the certificate, or where it appears that the architect has any concealed interest in the contract, or where the failure to secure the certificate is due to the refusal of the architect to act and to perform the duties which, under the contract, he is called upon to perform.

A reading of the above may, perhaps, give an impression that the rule requiring the production of a certificate is more honored in its breach than in its observance. This is not the case. An analysis of the instances where the court will intervene, to prevent an injustice being done to the contractor, will show that they are exceptional cases, where the contractor is not in any way at fault, but where his failure to produce the certificate is the fault of the owner, or of the architect who represents him. In an ordinary case, where the usual good faith is observed on all sides, where there is no collusion between owner and architect, and where the latter is acting to the best of his ability and in good faith in arriving at his determination, the failure of the contractor to produce the certificate called for by the contract will, in all likelihood, be fatal to his recovery, where the contract makes the production of the certificate a condition precedent to payment.

I recently represented a client in a case of this kind. The architect, in his discretion and in accordance with what he believed to be just to both parties, had refused to issue a certificate for the work done. The sub-contractor decided that he would secure this payment, whether the certificate were issued or not, and accordingly brought suit against the general contractor and demanded a jury trial. It was well nigh impossible, in the court where the suit was brought, to secure a jury which would not naturally favor the sub-contractor in a controversy of this kind. Despite everything which one

could do in selecting the jurors, and despite all the challenges allowed under the law, the jury as finally constituted contained a number of men themselves engaged in trades akin to the business carried on by the sub-contractor, and naturally predisposed to view the controversy in a light favorable to him. The sub-contractor's case was presented to the jury and it was quite evident that, no matter how many or how impressive witnesses the defendant might introduce, to negative the allegations of the sub-contractor that his work had been properly done and completed, the jury would render a substantial verdict for the latter. My client's one chance was to prevent the case going to the jury, and the one ground on which it was possible for him to do this was the fact that the architect had not issued the certificate called for by the contract. At the close of plaintiff's case, I presented this objection, accordingly, and moved for a dismissal. The result was that the case never went to the jury, and that the parties finally agreed upon an adjustment which was fair and satisfactory to each of them.

It seems self-evident that, if the architect be intrusted with the duty of supervising the construction of the building, all orders to the contractor, involving additions to or modifications of the contract, should be submitted through the architect. I have already touched upon the danger of the architect authorizing any extras or changes without the definite and clear approval of the owner. It is very nearly as important that, where the owner desires changes made, he should communicate his wish to the architect and not direct to the builder. Where the latter course is followed, confusion must invariably result.

I have had before me recently a case in which a very unpleasant situation was created, and a great deal of misunderstanding caused, by the owner giv-

ing orders to the contractor direct. He did not do this because of any conscious desire to slight the architect, but because he did not realize, probably, the effect of handling the job in this way. Impatient to secure quick results, changing every few days his decision as to details of construction and the like, and meeting the builder at the job, in the absence of the architect, he would issue instructions to the former for changes in carpentry work, plumbing, and decorating, without troubling to communicate them through the architect, or even to advise the architect promptly of the instructions so given. The inevitable result followed. The owner, by changing some item which he regarded as of minor importance in that the change involved small expense, and not having the practical experience of the architect, would thereby make necessary other changes, the aggregate expense of which would be considerable. In directing that an electric outlet be changed from one side of the room to the other, he would not consider that, in order to do this, the floor or ceiling work might have to be changed or that, in cutting out an alcove or doorway, steel or timber construction would be required to carry the weight which the bearing partition had formerly supported.

The contractor was somewhat at fault since he did not, apparently, make as clear to the owner as he should have, the effect and cause of the various changes. Be that as it may, the result was that, after the owner had proceeded thus for a number of months, he received a bill from the contractor which showed a tremendous increase over the original estimated cost. He at once refused to make payment of the bill, and descended upon the helpless architect with an evident intention and desire to hold him responsible for the adjustment of the situation.

The architect had seen the danger of the situation

some time before, when he had learned of the course which the owner was following, and had unsuccessfully tried to point out to the latter the foolishness of his action and the consequences which must follow. He had pointed out also, that it was not fair to him that the work should be handled as it was being handled, that changes might be made which would result in architectural work which he would not care to have known as the work of his office, and that his responsibility as supervising architect should not extend to work which he did not authorize, or to changes made and work done without his knowledge or approval. The particular case which I have in mind was aggravated by the fact that the architect had agreed with the owner on a definite charge for his services. When he agreed to this he of course expected that the work would proceed as originally planned, and did not count upon the repeated modifications, additions, and extras, decided upon by the owner. The owner, to cap the climax, took the position that, while he would not pay the architect a cent more than the amount originally agreed upon, or allow him any commission on the added cost of the work made necessary by the orders given by the owner to the contractor, yet he would hold him responsible as supervising architect for the proper construction of the entire job, including both the work originally laid out by the architect and the items authorized by the owner during the progress of the construction.

As a legal proposition, the owner could probably not have sustained any such inconsistent claim as this position would involve. As a practical matter, however, the architect was faced with the alternative of retiring from the job, to avoid possible responsibility for work which he did not approve, or of continuing with the work, making the best of a bad

situation and endeavoring to make the owner see reason. It was also clear that, if he did not continue, the contractor would probably not receive payment for the work done. While this might be just retribution for the failure of the latter to insist that orders should be given to him through the architect, or to report to the architect the orders given to him direct, yet the architect did not feel that he could withdraw from the situation, without an effort to secure an adjustment which should be reasonably fair to the contractor. He accordingly chose to continue on the job and finally succeeded in arranging a proper settlement between the owner and the contractor. The owner refused, however, to pay him any commission beyond the amount originally specified. The result was that the amount which he received was about one-third of the value of the services which he rendered.

If it had been more clearly and definitely agreed that the owner should not follow the course which he did or if the architect, when the tendency of the owner to handle things direct had first become manifest, had insisted either that the practice be discontinued, or that he be allowed to withdraw, the difficulty would have been avoided, the architect would have saved many hours of time for which he never received remuneration, and much of the unpleasantness which developed between him and the client would never have arisen.

I have already pointed out the fact that the relationship between the architect and the owner is very similar to the relationship between the lawyer and his client. This similarity between the two professions may be properly carried a step farther and the ordinary architect will no doubt be especially astonished to know to what an extent, in his capacity as

supervising architect, he is constantly acting in a judicial or quasi-judicial capacity.

Every architect is, of course, familiar with those clauses of the construction contract now so generally used, which designate the architect as arbitrator to determine matters in dispute, and to pass upon questions involving the construction of the plans and specifications and the work done thereunder. The architect, when acting under such a clause of the construction contract, acts in a quasi-judicial capacity. This is true, even if the contract be so worded that he is not appointed arbitrator in the fullest sense of that term, or in the sense that he is to determine an amount in dispute between the parties and render an exact decision thereon. If he is called upon, under the contract, to act generally in the capacity of an arbitrator or if, under the operation of the contract, it comes about that the parties to it are placed in a position where their rights are to be determined by the decision of the architect, he is acting as arbitrator sufficiently to bring him within the classification of a quasi-judicial officer. In his capacity as such it is manifest that the rights of the contractor are dependent upon his determination, fully as much as are the rights of the client. While the architect is employed, in the first instance, by the client, when he is placed in this judicial position he should and must carefully observe the rights of the contractor, as well as the rights of the client, and hold the scales as evenly as may be between them. The contractor, in becoming a party to the building contract, with its provision that the decision of the architect in matters of dispute and the like is to control, has deliberately placed his interests as to any such questions in the hands of the architect. This necessarily implies his trust in the fairness and good faith of the decision which the architect may be called upon to render.

The Courts will be diligent to protect the contractor in the trust and confidence which he thus places in the architect, just as they are diligent to protect the owner in his reliance upon the ability and fairness of the architect. The latter, while acting in this quasi-judicial capacity, is accorded, to a certain extent at least, the immunity which is ordinarily enjoyed by judges or those acting in a judicial capacity. Certain courts have held, accordingly, that an action for want of proper skill or care, or an action based upon negligence, will not lie against an architect, when the neglect or oversight complained of related to the acts of the architect in his judicial capacity. It has even been argued that, as an arbitrator, he would not be liable for misconduct. I should not advise any architect to rely upon his position as an arbitrator or as a quasi-judicial officer, to afford him immunity in the latter case. I mention it merely to emphasize the extent to which the courts have gone in their logical application to the architect, when acting judicially, of the same rules which they apply to any other judicial officer.

It is, of course, evident that, in whatever capacity he may be acting, the architect must not be guilty of any fraud or collusion with either of the parties to the building contract. For infringement of this rule, for any concealed interest in the building operation or any improper collusion with either of the parties thereto, inconsistent with the duties which he owes to them as architect under the contract, the architect will be liable to the injured party. It is unnecessary to discuss this phase of the matter at length, as it is my purpose to treat of the dangers and difficulties which await the negligent, thoughtless, or unwary architect, rather than to consider the case of an architect who is acting deliberately with any degree of bad faith. Undoubtedly the safer plan,

in any event, will be for the architect to proceed on the assumption that no immunity will attach to him, and to so conduct his work that he will have no need to rely upon any such defense.

CHAPTER IX.

COMPETITIONS.

Dangers of competitive work.—Cautions to be observed.

The tendency to seek architectural advice and service under competitive conditions is on the increase in recent years. When the architect enters a competition he should do so with an understanding of the uncertainties and difficulties with which he may be confronted in this class of work.

In the usual competition there is no contract between the parties, in the sense of a written agreement signed by each of them—the sense in which in the main I have employed the word contract heretofore. There is an understanding, but it is based, ordinarily, upon the terms of the competition under which the sketches and plans are submitted.

In many instances, the published terms of the competition are none too carefully drawn, and are both ambiguous and dangerous from the point of view of the interests of the architect. Before entering any competition, the architect will do well to analyze the conditions under which it is to be held and to assure himself that the provisions, with respect to his compensation and the services to be required of him, are proper and clearly stated. If he is chosen, there should be no question of the validity of his appointment, or of the availability of funds from which his commission may be paid.

If the competition announcement is so phrased that the amount of the fee is not clearly fixed, and if

this question and other terms of the architect's employment are left open for future decision or adjustment, following the decision of the judges, the architect is running a serious risk. He is placing himself in a position where he may, at considerable expense in time and money, participate in the competition and be selected as the winner, only to find that an equitable arrangement is not possible when it comes to a final decision on the terms of his employment.

It is important, also, that it be made clear in the beginning by whom the successful architect is to be employed. The amount of his fee may be set forth in such terms that it cannot be questioned and yet this will not avail him greatly, unless the terms of the competition are such that, if selected, he is placed in the position of dealing with a responsible principal.

Not long ago, a widely advertised competition was held and participated in by many architects. Those who were successful found, when it came to receiving the compensation due them, that they could secure no satisfaction of their proper requests for payment. Those to whom they looked for payment took the position that it had not been contemplated under the conditions that they were to be responsible—that they were acting merely as advisers or committees—and that the architects must look to others for their compensation. The terms of the competition were sufficiently ambiguous so that this issue might be raised. In endeavoring to collect the fees due to a number of the successful contestants, I found it exceedingly difficult to fasten the responsibility upon those who had been the real parties in interest in conducting the competition. It was only after repeated conferences, and long continued efforts, that we were able to force those who had benefited by the

work of the architects to adjust the claims of the latter on an equitable basis.

In many instances, the competitions causing the greatest amount of confusion and difficulty are those of less importance, where the plans are desired for publication and distribution in book form, in furtherance of the work of some association or of those interested in promoting construction.

In other instances, the competitions have to do with public work of importance—work undertaken by the Federal or state governments or by municipalities. In these competitions the work and amounts involved are necessarily greater. Where the employment is to be by some department of the Federal government, or by a state or a municipality, the architect should exercise special care.

The unsatisfactory nature of work for any governmental body, state or Federal, is proverbial. Governmental contracts are hedged about with a mass of red tape and regulations which render them dangerous to the uninitiated and in many cases dangerous, also, to one experienced in dealing with them. The difficulty is not so much a technical attitude, on the part of the official representing the governmental body, as the statutory limitations placed upon his authority. The execution of contracts in behalf of the Federal government and its agencies, especially, are subject to provisions of many Federal statutes, many of them of venerable age and unknown to the ordinary layman. In dealing with the case of municipal corporations, the requirements are perhaps less technical, but more care must be exercised than in dealing with an ordinary business corporation. The architect must satisfy himself that his contract has been approved by the proper municipal body authorized to pass and act upon it, and that he is in

such a position that he has a good and valid agreement with the municipality.

I shall have occasion, in the next chapter, to discuss more fully the dangers which characterize municipal and Federal contracts and the precautions and formalities which must be observed with respect to them.

Assuming that a government or municipal contract is correct and properly authorized and executed in the first instance, the troubles of the architect are nevertheless not at an end. It remains for him to secure payment for his services, and there is always additional red tape and technical procedure involved in securing the approval of the bill and the issuance of the voucher in payment of it. He will be confronted in many cases with irritating and sometimes serious difficulties, such as the fact that the fund from which the payment must be made has been exhausted and cannot be drawn upon until a new appropriation is effected. He must also remember, in all of his dealings with governmental bodies, that it is much more difficult to force a legal recovery from them than from individuals or ordinary business corporations.

Work for the Federal Government or states or municipalities may in many instances be desirable and attractive to the architect. Where he undertakes it however, he will do well to proceed with much more than ordinary caution and to secure competent advice, from one who is conversant with dealings with the Government and with the requirements of governmental work and contracts, before committing himself to the work proposed or incurring any expense in connection with it.

CHAPTER X.

DEALINGS WITH CORPORATIONS AND WITH THE GOVERNMENT.

Dangers of unauthorized acts by corporate officers.—Steps necessary to insure proper execution of contract and protection of architect.—Technicalities and dangers of governmental and corporate contracts.

So large a proportion of the business of today is carried on by corporations that a word of caution, in addition to what has been said in the last chapter, is in order with regard to the making of contracts with business and municipal corporations or other governmental agencies. The modern business corporation is managed by its directors. The policies of the directors are put into effect and carried out by the officers but, in the last analysis, it is the directors or stockholders who must pass upon matters involving corporate obligations, if the corporation is to be bound thereby. Where a contract is to be made with the corporation, whether the other party to the agreement be the architect or the owner or the contractor, he should, if the contract involves a substantial amount, satisfy himself that the officers executing the contract in behalf of the corporation are duly authorized to do so. It is not necessarily a question of any bad faith on the part of the officers. It may be, that they will execute a contract, believing firmly that their powers are broad enough to give them the right to do so. Yet, it may develop later that they have been erroneous in this belief and that the execution

of the contract was beyond the authority vested in them.

In many instances of this kind, the party making the contract with the corporation has had the unpleasant experience of suddenly being told by the corporation that the agreement made with him was not binding upon the company, because it had not been properly authorized by the directors in the first instance, and that the company refused to recognize its liability and repudiated any obligations under the contract. To prevent such a development, if there be any doubt whatever, the corporation should be asked to deliver, at the time the contract is delivered, a copy of a resolution of its Board of Directors or, in special cases where that may be necessary, its stockholders, authorizing the execution of the contract. This copy should be certified by the secretary of the corporation, and his certificate should state, in substance, that the copy so certified is a true copy of a resolution adopted at a duly held meeting of the directors or stockholders, that the contract was executed by the officers of the corporation, that they were officers duly acting in behalf of the corporation and under its authority at the time the contract was executed, and that they executed it pursuant to the authority vested in them by the resolution. No elaborate resolution or certificate is necessary, provided the foregoing is covered in substance. It will be readily seen that a resolution and certificate in this form will, in large part, obviate the danger of a repudiation, or attempted repudiation, of the contract by the corporation at a later date, and assure the other party to the contract that the corporation is bound by the agreement entered into in its name.

In the case of municipal corporations, and in dealings with state or national governments, the matter becomes of considerably more importance, and it

may be safely taken as a general rule that, in all such cases, special care should be taken to see that all required formalities are complied with in the execution of the contract. During the war, for instance, the army, in purchasing materials, advertised for bids on stated materials and quantities. On receipt of bids the successful bidder was advised that his bid was accepted. Not only this, but he was sent a copy of a so-called "order," stating that the order for the materials, in accordance with his bid, was placed with him. Anyone not initiated in the intricacies of government purchases, and the operation of the machinery whereby they are made, would naturally suppose that, when a bid is called for, submitted in writing, accepted in writing, and a written order for the material placed, the transaction would amount to a contract binding upon both parties. The fact is that, under the Federal statutes, while the contractor might be bound, the Government, unless it had actually received the materials covered by the order, would not in the ordinary case be bound by the order, unless, in addition to the foregoing formalities and the written order referred to, a contract had been entered into between the contractor and the Government in writing "signed at the end thereof" by both parties. It is cases like this which emphasize the danger of government contracts and dealings, without adequate inquiry, care and investigation.

How easily an architect may become involved in difficulty, by a failure to take proper precautions in dealing with a corporation, was well illustrated by a case which was recently brought to me. The plans for the building were originally ordered by a client individually. It was stated, however, that a corporation was to be the owner of the property on which the building was to be erected, and that this corporation was being formed. Various letters, set-

ting forth the agreement between the architect and the client, were exchanged. Thereafter the corporation was formed and the architect continued his dealings with the corporation, as the owner. He never secured any agreement from the corporation, recognizing definitely its obligations and the fact that it was the party in interest, as distinguished from the original client who had first brought in the matter, and who was an officer of the corporation. Disagreements arose and the matter developed into litigation. The situation would have been much simplified if, on the formation of the corporation, a new agreement, whether in letter form or otherwise, had been made, recognizing clearly the fact that the corporation was now substituted as the party in interest, in the place of the individual. Fortunately, in the case referred to, the subsequent dealings of the corporation with the architect were such as to remove, to a substantial extent, the doubt which might otherwise have existed on this point. The matter might easily have developed somewhat differently, however, and the failure to secure some proper evidence of the corporation's liability might well have proven the cause of serious embarrassment and loss to the architect.

A case, decided in 1880 by the Supreme Court of the United States, involved the erection of a proposed new courthouse and city hall in the City of Chicago. It is interesting, as showing how easily an architect may be led to believe that all necessary formalities have been complied with, when this in fact is not the case, and when an absolute legal bar to his recovery exists. The architect was represented by Mr. Melville W. Fuller, who later became Chief Justice of the United States, and it may be taken for granted, therefore, that the decision was not adverse by reason of any lack of proper legal advice or effort.

The County of Cook and the City of Chicago, situated therein, had proposed to erect certain public buildings, the portions of the buildings to be used by each to be paid for by them respectively. They jointly offered a premium for the plans. A large number of architects entered the competition and submitted designs. Building committees of the City Council and the Board of County Commissioners duly reported their award of prizes, and the plaintiff in the case referred to was awarded the third prize. The prize, which was a thousand dollars in cash, was paid to him. Later, the County Commissioners and the City Council, respectively, adopted a resolution which provided, in substance, that the plan submitted by this architect and for which the prize had been paid, as above, should be and was selected and adopted, as the plan from which the buildings should be built, subject to any changes and modifications determined upon by the City and County authorities, and provided that the estimate of the architect presenting the plan, as to the cost of building construction, should be verified.

The architect testified that he had thereafter verified the cost of construction, and produced his plans for which the prize had been given, and offered to prove their value and the time and expense involved in their preparation. He further offered to prove a custom of architects, to the effect that the superintendence of the construction of a building belonged to the architect whose plans were adopted. He also offered to prove a custom to the effect that, where prizes for plans were offered, the plans of the successful competitor belonged to him, and that, if they were later adopted as the plans from which the building was to be erected, they should be paid for, in addition to the payment of the prize itself.

The trial court excluded all of this proposed testi-

mony, and directed a verdict for the defense. The United States Supreme Court, in its decision on appeal, confirmed the correctness of this ruling. It pointed out that the resolutions of the County Board and City Council did not bind these bodies to make payment to the architect of the compensation which he claimed, but that they merely amounted to a selection of a particular plan and possibly, in addition, to the announcement of a purpose to erect a building in accordance with it. The court held that, if the buildings were so erected in accordance with the plans, then the claim might be well presented by the architect, but that inasmuch as they had not been erected, it must refuse to stretch the legal effect of the resolution adopted, to the extent of holding that it amounted to an agreement to pay for the plans, whether the work were proceeded with or not. Reading the case carefully, in the light of the court's decision, it is easy to see that the architect could not recover under the conditions which existed. On the other hand, it is not difficult to realize how the architect, in view of the resolution adopted by the governing bodies of the City and County, might easily have supposed that he had a valid agreement, that his plans had been formally selected, and that the proceedings taken had amounted, in effect, to his appointment as architect on a basis which would give to him a valid claim for the compensation which he sought, despite the fact that the work had not been proceeded with.

In a present day case, in which I represented the architect, another excellent example is furnished of the difficulty in which an architect may become involved by reason of entering into a government contract without proper consideration and advice. In the case which I have in mind the architect had won a competition for a memorial, to be erected under

the direction of the Government. The contract, which was prepared by the Government and signed by the client, without any legal advice, provided a fixed compensation for the architect and further provided for a bond to be furnished by the latter. Realizing that this was a usual provision, the client signed the contract and thought nothing more of the matter, until it became apparent that the unrolling of the customary governmental red tape (it was army red tape at that), would delay the completion of the memorial for many years. The memorial is not yet completed but, each year regularly, the architect receives a bill from the Surety Company which furnished the bond, requesting the payment of the annual premium due thereon. When he took up the matter with the government authorities in charge, they expressed to him their regret at the delay, but carefully set forth a number of perfectly good reasons why, under the law, the Government could not make payment of the premiums, or make good the loss suffered by the architect in connection with them. The Government's representatives agreed with me that theoretically, on the basis on which the matter was proceeding, it might be quite possible that the total premiums paid by the architect on the bond might exceed the amount received by him for his services, if the delay of the Government were to continue. They appreciated the difficulty and showed a desire to do anything which they could to help the architect, but were hampered by the laws and regulations from proceeding as a private individual or a privately controlled corporation could have proceeded. Such a situation has in it elements of humor, which it was a bit difficult, naturally, for the architect to appreciate. We finally arrived at a solution which has straightened out the trouble, but the case remains a very good example of the restrictions which surround

municipal corporations or government agencies, and which necessarily result in placing contractual and business dealings with them in a class by themselves, subject to special rules and requiring special care and consideration.

CHAPTER XI.

THE LIEN OF THE ARCHITECT.

Importance of lien protection.—Its scope and effectiveness.—Approval by owner required.—Caution necessary, especially where title to property is not in name of client.

I venture the assertion that not more than forty per cent of the architects practicing today in this country realize that the architect has been accorded protection under the lien laws and given a mechanic's lien on the building upon which his work is done. The extension of the protection of the lien law to architects is not, however, an especially recent development. The lien laws in the better jurisdictions have, for a considerable time, recognized the right of an architect to a lien for the work done. More recently, however, and especially within the last few years, the laws have been so broadened as to give to the architect a degree of protection under the mechanics lien statutes, which he did not theretofore enjoy. In New York, for instance, prior to the Amendment of 1916, an architect was not entitled to a lien, unless he actually supervised the work done. The 1916 law so enlarged the scope of the word "improvement," however, as the latter word is used in the mechanics lien law, that the protection of the law has been extended sufficiently to enable the architect to recover thereunder for the work done in the preparation of the plans and specifications, even though he may not act as the supervising architect. This is in accordance with plain common sense and fairness. The plans and specifications certainly enter

into the erection of any building, just as surely as do the bricks and mortar, the timbers and the plaster work. The basis of a mechanic's lien has always been the improvement of the real estate and, certainly, the plans and specifications which are responsible for the erection of a building, of beauty or utility, contribute in large part to the improvement of the property on which it is erected.

A mechanic's lien is a particularly effective way of enforcing one's rights. The ordinary architect is, of course, well acquainted with the operation of liens, from his experience with contractors and materialmen. He may be pleasantly surprised to learn how efficiently the filing of a simple lien may serve to protect his own rights and enable him to secure payment of a just claim, where the client is not inclined to live up to his obligations. The usual architect's lien applies in the case of the construction of an entire building. The lien applies no less, however, to the case of alterations, and it may be of interest to architects, practicing in larger cities especially, to realize that the lien law has been successfully applied, to give relief to an architect, where the services involved consisted of changes in the premises of a sub-tenant of a large building.

This point arose in my practice a number of years ago, and I derived a considerable amount of amusement from a case which made some new law in New York on this particular point. The case was in many ways an interesting one, although the owner of the building has never been able to properly appreciate its humor. The architect whom I represented had a client who was one of the tenants occupying a portion of the space of one floor of one of the large New York City office buildings. The tenant employed the architect to plan and supervise various changes in the lay-out of the tenant's offices, the

erection of new partitions and the like. The architect did the work, prepared the plans, presented them to the owner of the building, who approved them, and supervised the work called for. After the work had been done, the client, who had ordered the plans, became insolvent, and it became apparent that the only chance which the architect had to recover the fee due him lay in the enforcement of a lien against the building. We filed a lien for the amount due him accordingly. The effect on the owner was quite electrical. He was, without qualification, one of the maddest men that I have ever seen. To tell the truth, I did not blame him in the least, and I never pass the building, to this day, that I do not smile at the thought of his indignation, when he learned that a lien had been filed against the property for alterations made by a tenant and agreed to by him as a favor to the latter. The approval of the plans by the owner, coupled with the fact that we were able to show that the partitions were not simply temporary, but were joined to the structure in a manner sufficient to bring the improvement within the scope of the statute, enabled us to sustain the lien. The owner appeared personally in court and fought the matter to a finish, but the court awarded judgment in favor of my client, and the owner finally settled with him for the work done. The pleasant thing about the mechanic's lien, from the point of view of the architect, is, of course, the fact that the claim is secured, and that, if judgment be recovered, he may be reasonably certain that he will be paid, either from the proceeds of the sale of the property or by the bonding company which may have bonded the lien.

The successful enforcement of a mechanic's lien by the architect must depend primarily upon the approval by the owner of the work done. Unless the

work is approved by the owner, the architect's claim to the lien will fall and the remedy will not be available to him.

Approval by the owner does not mean, necessarily, a specific written or verbal approval. The approval may be implied. If the owner allows the work to be done, knowing that it is being done and, by his actions, indicates his acceptance of the situation and approval of it, he may be held to have impliedly authorized it. It is far safer, of course, to secure the written approval of the owner and, unless this is done, the right of the lien will rest upon an insecure foundation. In the case of architectural work, the consent of the owner may usually be established, without much difficulty, where the work is done for him direct. His approval of the plans, for instance, or the correspondence passing between him and the architect with reference to them, and his entering into the agreement with the contractor for the conduct of the work, are all evidential of his knowledge that it is being performed and of his consent that it be done. Where work is done for one who is not the owner of the property in connection with which it is performed, a more dangerous situation is presented. If work is done for a tenant and the consent of the owner of the property, expressed or implied, is not secured, the architect will not be able to enforce a lien against the property. The fact that he may, in such a case, have a perfectly definite and comprehensive contract with the tenant, who is his client, directing him to do the work and specifying the compensation to be paid to him, will avail him not at all, in so far as the enforcement of a lien is concerned. It will enable him to hold the client liable, but it will not place him in a position where he can satisfy his claim from the property itself.

Where work of any magnitude is undertaken,

therefore, for one who is not the owner of the property involved, and where the financial responsibility of the client is not satisfactorily established, it will be an exceedingly wise precaution for the architect to secure, if possible, the consent of the owner of the property to the work proposed. This consent, as we have seen, should, wherever possible, be in writing or evidenced by some written memorandum. It is not at all necessary, however, that it be placed in any special form, or be formal or technical in its language. A word to the owner, stating that the architect has been asked to perform the work and, inasmuch as the client is not the owner, that it is desired that the owner consent to this being done, and a reply from the owner stating that he does consent, is all that is required. It is not necessary to raise the question of lien protection in securing this consent. It is, in many cases, quite natural, if not necessary, to ask the owner to give his consent to the plans. An endorsement on the plans of his approval, without any other letter or word from him, may be sufficient to indicate clearly his consent to the work and satisfy the technical requirements of the lien statute.

Another phase of this same question is involved where the client is not a tenant, but where the property stands in the name of someone else, as, for example, in the name of his wife. This latter is a very common situation and, where the title is in the wife, the architect will not be able to enforce his lien, if his contract is with the husband, unless he can establish the consent of the wife to the performance of the work. The mere failure of the wife to protest against the performance of the work and the fact that, seeing certain work done, she remains silent, cannot safely be relied upon to establish her legal consent. Where the title is in her name, if the architect wishes to protect his legal rights, he should either

make her a party to the contract covering his services or secure from her some letter or memorandum, showing that she consents to the performance by him of the services which he has been asked to perform. I have recently had a case of this character, where the architect's contract was with the husband, and the title to the land proved, upon investigation, to be in the wife. The husband refused to make payment of the architect's account and had no money from which the architect could satisfy his claim. The only possible hope lay in the filing and sustaining of a lien and, in this connection, we were met with the difficulty of proving the consent of the wife. The case was finally adjusted but, if it had gone to trial and our proof with respect to the consent of the wife had been considered insufficient, the architect's right to a lien would not have been sustained and the final result would have been a total loss to him, so far as this particular job was concerned.

There is in all probability, however, no branch of the law more technical than that which has to do with the construction and practical application of lien statutes. The Lien Law is a purely statutory creation. Unlike a large proportion of our law, as it stands today, it is not the result of a slow development based on the common law and the decisions of the courts over a period of many hundreds of years. On the contrary, it is a remedy created arbitrarily, by the statutes of the various jurisdictions in which it is applied, to supply the protection which, under modern conditions, it has been felt should be accorded to him who has, by his labor and services, contributed to the improvement of real property. As is well known, the doctrine has been further extended to cover mechanics in their work on articles of personal property, such as automobiles. The phase of the Lien Law with which the architect is naturally con-

cerned, however, is the basic and important body of the law dealing with real estate improvements.

Due to the strictly statutory character of the law the statutes are necessarily technical and unless their provisions are strictly followed and observed the lienor may, as a result, lose the protection of the statute entirely. There are various requirements, for instance, which must be met in filing a lien under the laws of the different states. These laws vary in their scope and wording and the lienor, to be on the safe side, should in every case take proper advice before filing his lien. The preparation and filing of the lien is not a matter of difficulty to a lawyer familiar with lien law and procedure but it is extremely dangerous for any lienor to attempt to act as his own attorney and to prepare and file his own notice of lien. The expense incident to having the lien properly prepared and filed is small, and is negligible, when compared to the risk of loss incident to an attempt by the lienor to proceed alone and without proper advice.

CHAPTER XII.

THE REGISTRATION OF ARCHITECTS

The development and merits of registration legislation.—The practice of architecture by corporations.—Effect of registration laws on corporations.—The question of doing business.

The enactment of statutes covering the registration of architects is a comparatively recent development. It is a development which should be, and has been, welcomed by the architectural profession. Since the first registration law was passed, the various states have rapidly fallen in line with the registration idea and passed statutes which, while they differ in many ways, are nevertheless based on the same general idea. Just as physicians are licensed to practice, and lawyers are admitted to the Bar, so now the better practice is to have an architect admitted before he is allowed to undertake the practice of his profession. Public opinion, as well as the opinion of thoughtful architects, has strongly endorsed the registration plan. The protection which it gives to the public is obvious, and the advantages which accrue from it to thoroughly high-class architects, in preventing unprofessional competition and a general cheapening of the professional standards, are equally obvious. It is probable that as time passes the registration statutes will attain a greater degree of uniformity and that a workable reciprocity, between the various states, will be so developed as to make the registration laws flexible and not unduly burdensome.

As matters stand today, the architect, practicing

in a state other than that where he usually practices, should look up the laws in force in the second state and ascertain their requirements with respect to registration. The states differ in the stringency of their registration laws. It is only by having the laws examined that the architect can tell whether they are applicable to him, and whether it is necessary for him to register, for a given piece of work and, if so, how the registration is to be made. A New York firm, for instance, being employed to do work in another state, must ascertain what the laws of that state are before it can know whether the work in hand can be done without the formality of registration, in the other state, as well as in New York. Often, where such a registration is demanded, the issue may be met by having the plans filed in the name of someone who is a registered architect in the neighboring state.

If an architect in New York is employed to prepare the plans only, and is not called upon to visit the state where the work is being done to supervise it, and the actual work on the plans is all carried out in New York, he will not, as a rule, be said to be practicing in the other state. If, however, he is called upon to go into the other state and there supervise the work, this condition may be changed and he may come within the scope of the registration laws of that state. It is all a question of degree, to be determined by the facts in each case and by the laws applicable thereto.

The modern tendency to conduct business by corporations has appeared in the professions as well as in business itself. In the legal profession, we have title companies and companies to aid in the formation of corporations, in the medical profession we find various corporations carrying on certain phases of the work formerly done by general practitioners and,

in the architectural profession, corporations organized to practice architecture and engaged in the active practice of that profession. Where a corporation is engaged in the practice of architecture, it will be found that the usual course, so far as the registration laws are concerned, will be for it to file its plans in the name of one of its officers, who is a registered architect, or of some other registered architect, and in this way, comply with the state requirements.

If the law of a certain state is so framed as to make the requirements for registration apply only if the corporation is doing business in the state, another question of law is presented.

"Doing business," within the meaning of the law, is a different thing from doing business as the ordinary layman would understand that term. The statute of a state may be explicit and state that any corporation, conducting business in the state, must meet certain technical requirements, which are specified and, in default of its doing so, will be subject to certain penalties or forfeiture of rights. The courts, in construing such a statute, have very generally held that merely having an office in a state or conducting certain operations within the state is not necessarily doing business in the state. Where, for example, a New York corporation conducting the practice of architecture makes the contract for its services in New York State, and has its office in New York State, and prepares its plans in New York state, it will not under the laws of many states, be considered as doing business in them, because in carrying out the work it is called upon to supervise the construction in the other states, and to send its representatives into the other states for this purpose. Each case depends upon the facts, and upon the laws of the states involved.

CHAPTER XIII.

THE ARCHITECT AS AGENT.

Dangers which characterize the agency of the architect.—Specific and implied agencies.—Clear agency authority essential.—Cautions.

We have had occasion in the preceding chapters to refer to some of the phases of the architect's agency. The question is important enough, however, to merit a separate, if brief, discussion. The agency of the architect for the owner is a phase of his work which carries with it many potential dangers. It is well that the architect should understand the more important of the agency rules involved in his practice and the difficulties with which he may be met, if he undertakes to disregard them.

An agency may be specific or implied. The only agency which the architect can safely proceed under is a specific agency. He should not at any time, in the absence of a specific statement from the owner, assume that he has powers to represent the owner as an agent, other than those which have been specifically delegated to him. It is quite natural that an architect may assume that certain of the powers given to him, as for instance the power to supervise, carry with them, by implication, other agency powers beyond those which legally he is entitled to exercise. No architect should indulge in any assumptions, in a matter of this kind. Authority to supervise the erection of a building does not give to the architect authority to make any new contracts in connection with the work and binding upon the

owner. It does not give to him the right to employ any new contractor to do work already undertaken by the original contractor, or to substitute any subcontractor for the general contractor, or, if a form for orders and certificates is provided in the original contract, to in any way vary this form. If the architect proposes to assume any of these additional powers he can only be protected in so doing by securing the specific and written consent and approval of the owner to this effect.

In the exercise of any authority which has been granted, the agent who would be on the safe side must be diligent to act strictly within the terms of the authority given and not in any way to pass beyond the limits set by them. The architect as agent must follow this rule and be careful not to authorize extras, or changes, or allow any departure from the terms of the contract, without the written approval of the owner. He must remember, also, that any authorization, included in the contract, will be construed in the light of all the provisions of the contract. It may well be altered by certain of the other provisions, in such a way as to make its legal effect quite different from that which the architect assumes it to be.

The only safe rule is to secure specific and clear authority for any act which you perform with respect to any matter on which you have doubt of your full authority. Do not trust to the fact that the owner may, at a later date, approve and ratify the action which you have taken. Except in the case of emergencies, where the owner is not available and an instant decision in his interest is demanded, and the architect has a somewhat broadened authority, there is no reason why specific authority cannot be secured and the architect adequately safeguarded.

In the issuance of certificates, as in the authoriza-

tion of extras, the architect must be guided by the terms of his employment and not by possible feelings of sympathy for the contractor, or by other considerations. He must remember, also, that any extras performed prior to the execution of the contract may be considered as merged in the contract, when executed, and not, therefore, the subject of proper extra allowances.

The ordinary contract for the employment of an architect unquestionably appoints him as the agent of the owner. It appoints him as this agent, however, only for specific purposes and within definite limits. His rights of decision as arbitrator and his rights, as the owner's representative, in supervising the work, are all limited and defined by the understanding under which he is acting. It is not a matter of great difficulty for him to analyze, when the work is undertaken, the extent of the authority which is given to him and fix in mind its limitations. If these are too stringent, the time to change them is when the contract is being made. If they are not changed at that time, whatever authority may be needed thereafter, to authorize an extension of the powers originally extended, should be invariably secured before the architect undertakes to extend his agency powers, or to act for the owner on any point upon which the owner has not granted to him the authority to act. In any case where substantial sums are involved the architect should be reluctant to act for the client in preparing the contract between the latter and the contractor. This contract is filled with provisions which are matters for the lawyer and not for the architect. The architect, for example, will have ordinarily little knowledge of the legal requirements of the liquidated damage clause. Unless this is properly drawn, the courts may construe the clause as calling for a penalty and, if so, will hold it to be

unenforceable. Similarly, many of the other provisions of the contract deal with matters which are almost entirely questions of law, rather than of architecture. The advice of the architect with respect to the contract will be of great value and should be placed freely at the disposal of the client. In the last analysis, however, the responsibility with respect to the contract and the provisions included in it rests upon the client and not upon the architect. This division of responsibility should be kept clearly in mind and the architect should be careful not to assume any responsibility which properly rests upon the client.

CHAPTER XIV.

TERMINATION OF ARCHITECT'S EMPLOYMENT.

Rights of client to terminate.—Interests of contractor.—Right to change architect.—Obligations of architect to contractor.—Rights of architect on subsequent use of plans by client.

The employment of an architect, or of any professional man, is a contract of so called personal employment. The client can dispense with the services of the architect at any time, subject to the right of the architect to hold him liable in damages for any breach of the contract on his part. Here again the architect's employment is similar to that of a lawyer. If you employ me to do a certain piece of work and after I have partially completed it, you do not like the way I have done it, you may go to someone else and I cannot prevent your doing so. It is the same with the architect. If he is employed to do a certain piece of work and the owner does not wish to complete the building, the owner does not have to do it; it is not like buying a house, when you can compel the seller to convey title to you. The client depends upon the personality and special qualifications of the adviser whom he employs. It is hardly necessary to say that a contract of this character cannot be assigned by the architect and the client thereby forced to accept, as his adviser, someone other than the person whom he chose, and to whom he has been willing to entrust the work which he desires to have done. The client is not the only one, however, who is interested in the personality of the architect and whose rights are affected thereby. The

interests of the contractor are directly affected by the character of the architect who is selected. The contractor is not interested to the extent that the client is interested but he has, nevertheless, a very real interest in the type of architect chosen and in his standing and ability, in the field wherein he is chosen to act.

Under the ordinary construction contract the architect is called upon as we have seen to perform various duties as arbitrator, and duties wherein it is necessary that he act in a more or less judicial capacity, with fairness to the client and to the builder and with obligations to each of them. If the construction contract be so drawn as to leave important details of construction, interpretation of the plans and specifications and the like, to the discretion of the architect, it is but logical that the contractor should not be forced to proceed with the work if the architect be changed without his consent and contrary to his desire, unless, of course, the contract specifically covers this point and provides that a change in architects may be made without consulting the contractor. It is to the interest of the contractor, just as it is to the interest of the client, to have selected as the architect one who is both able and fair minded.

I was consulted recently in a case on this very point. The contract left many substantial questions to be determined by the architect and the latter, under the terms of the contract, was necessarily called upon to act in a judicial capacity and as arbitrator, on many points, between the client and the contractor. The contractor's interests were directly involved by the decisions of the architect and the contractor entered into the agreement, in the first instance, because he knew the reputation and standing of the architect chosen and because he had faith, not only in his integrity, but also in his fairness and

in his general broad-minded point of view, in dealing with questions which involved both the rights of the owner and the rights of the contractor.

After the contract had been entered into the owner, for some reason, decided to employ a new architect in the place of the architect specified in the agreement. The contract contained no provision with respect to termination. The contractor took the position that as a new architect, and one in whom he was not ready to place his confidence, was to be employed, he would not proceed under the work. When the contract was entered into the rights of the parties became fixed thereby and, if the contractor executed the instrument in dependence upon the employment of a particular architect, it is but fair that he should not be forced to proceed with the work under the direction of a different architect, not contemplated in the first instance. The court took this view of the matter and upheld the contention of the contractor.

The matter, in the last analysis, is a question of contract. As such it is dependent upon the phraseology of the particular contract employed. If it is desired to give to the owner the right to change his architectural adviser, without affecting the obligations of the contractor under the agreement, the contract should be so worded as to make this point clear.

It is interesting to note that Article 9 of the General Conditions of the Standard Contract of the American Institute provides that, in the event of the termination of the employment of the architect, a capable and reputable architect may be appointed by the owner and that the status of this succeeding architect, under the contract, shall be the same as was the status of the architect whom he succeeds. Under this provision a contractor cannot object to the

appointment of a new architect, provided the new architect is "capable and reputable." This is entirely reasonable and proper and the employment of a clause, similar to the Standard clause referred to, will necessarily greatly lessen the possibility of disputes between the owner and the contractor, in the event that a change of architects is effected during the progress of the work or after the original contract is entered into.

Every conscientious architect, while considering the rights and interests of his client, will at the same time be mindful of the rights of the contractor. The architectural offices which enjoy the highest reputation for fair-dealing, among the public and contractors alike, are those which realize their obligations to the contractor and, without abating one jot of their care of their clients' interests, are careful to see that the contractor is fairly treated, and that his rights are recognized.

In the event of the termination of the architect's employment, the contract will control as to the compensation to which, under these conditions, he is entitled. If the architect is definitely employed to supervise the work to completion and is discharged, without fault on his part, and a new architect is employed to complete the work, the architect originally employed should be entitled to collect, as damages, the profit which he would have made, if he had been allowed to complete his work, as agreed. It often happens that, after a temporary suspension of the work or the termination of an architect's employment, the work is later proceeded with and another architect employed. As the Institute form of contract is worded, it is not very difficult, under such conditions, for the owner to make a technically correct settlement with the first architect, and have

the work completed by the second. I have always felt this to be an unjust result.

Of course, if the plans are wholly changed, the situation is different but, in the usual case, the building, if it has progressed to any real extent toward completion, at the time the architect's services are dispensed with, will be completed substantially in accordance with the general scheme which he had mapped out. While the plans will belong to the architect, if his contract has so provided, it will be quite possible for the owner, as a practical matter and in the ordinary case, to have the building completed by another architect in accordance with the scheme of the architect first employed. Where this is done, the architect who was responsible for the design and plans should most certainly be compensated beyond the amount covering the settlement with him up to the time of the termination of his employment.

For an unjust termination of his employment the architect will have his legal remedy. It is advisable, however, in addition, to have the contract provide that if the work, after it has been abandoned or suspended, is again proceeded with, the architect first chosen shall be in charge of the work to its completion. In the special forms of contract between architect and client, set forth in the appendix, there are included clauses designed to meet just this contingency.

CHAPTER XV.

CONCLUSION.

Legal "Don'ts" for architects.—Definiteness a controlling factor.

On an occasion not long ago, when I was lecturing to the students of the School of Architecture of the Massachusetts Institute of Technology, the member of the Faculty who introduced me told the following story: He said that he had recently talked with a Boston architect and that, in the course of the conversation, my book on "The Law of Architecture and Building" had been mentioned. He had asked the architect whether he had read it, and the architect had replied "My lord, no. If I were to read that, I should not dare to practice at all!"

I quite understand the feeling which prompted this rejoinder. It is not at all an unnatural one. My main purpose, in my writings and in my talks to architects having been to bring home to them the things in general which they should not do, it is not to be wondered at that this architect should have had the mental reaction which he did. The summarization of legal cautions to architects naturally results in a series of "Don'ts" and when one reads them one naturally receives the impression that they are more contagious than perhaps they really are. The "Don'ts" which an architect must consider and observe are, many of them, vitally and fundamentally important but, nevertheless, if properly considered, they fall into comparatively few and simple classifi-

cations. In the main, it will be found that they group themselves under the general headings dealing with the compensation of the architect, his proceedings as the agent of the owner, and his duties as the supervisor of construction.

I am not sure that I can better summarize the more important of the considerations which I have tried, in the foregoing pages, to bring home to the architect, than by leaving with him at parting a list of "Don'ts" applicable to the practice of his profession. If he can fix the following cautions generally in his mind, he should find the conduct of his practice comparatively free from misunderstandings and legal difficulties:

The architect should not: —

1. Forget that the relationship between the architect and the client is one of trust and confidence and that, on the other hand, the architect is under obligation to deal fairly with the contractor, as well as with the client.

2. Have any conflicting or concealed interest in the contract.

3. Have any private agreements or understandings with the builder.

4. Accept any personal favors from the contractor, placing him under any obligation to the latter. The owner might use the fact that he had done so against him, in a claim for negligence, entirely aside from any question of actual fraud or bad faith.

5. Act without a thorough understanding with the owner as to:

- a. The compensation to be paid; and

- b. All of the other terms and conditions upon which the architect is to act for him.

6. Proceed with preliminary sketches or any work without first securing, if possible, a written contract from the owner covering the above points.

7. Continue practice without securing a proper form of office contract to be executed by his clients.

8. Make any statements which can possibly be construed as representations or guarantees that the work can be done for any stated amount.

9. Fail to make it clear, affirmatively and by a proper contract, that he does not make such representations or guarantees regarding cost, and that he is to be paid for his services, whether or not the work is proceeded with.

10. Allow a statement by the client, that the cost of the work must not exceed a certain sum, to stand as the basis upon which his work is to be done.

11. Give any orders for extras, alterations, changes or modifications in the work, plans or specifications, without written authority from the owner.

12. Assume that his position as architect gives to him any such authority.

13. Forget that the ordinary building contract requires the written consent of the owner to justify a claim for extras, and that if extra work has been done on the authority of the architect, without a corresponding authorization to him from the owner, the contractor may be able to recover from the architect, while the latter will not be able to secure reimbursement from the owner.

14. Deal with contractors, without making it clear that he is acting purely as architect, and that as such, he is representing and acting for a client, whether the identity of the client be disclosed or not.

15. Ask for bids or accept bids in his own name, or say or write anything to the client which can be construed as making the architect, in effect, the contractor for the work.

16. Allow the contract to be let unless a proper unit price provision is included, which will enable the architect to check the costs and component parts

of the work and materials, done and furnished, as the job progresses.

17. Word the unit price provision so as to enable the contractor to concentrate the items of large expense at the beginning of the work, and so collect from the owner during the early stages of the work the major portion of the contractor's profit.

18. Consider architecture as an art alone, and disregard the fact that the modern practice of architecture is in many ways a business.

19. Undertake to receive and disburse for the owner the monies required to finance the building operation, unless absolutely necessary, and unless he is fully covered by a proper agreement.

20. Mingle the funds of the owner, advanced to him to disburse for the account of the owner on any item, with the funds of the architect.

21. Forget that the ordinary rule is that plans belong to the owner, in the absence of special agreement, and that the architect should have a definite written agreement, providing that the plans shall belong to him.

22. Assume that his employment as supervising architect gives to him any authority to make new contracts binding upon the owner.

23. Without specific authority from the owner:

a. Employ any new contractor to do work already undertaken by the contractor originally chosen; or

b. Substitute any sub-contractor for the general contractor; or

c. Vary the certificates or orders issued from the form specified in the contract, if a form be so specified.

24. Certify extras or authorize alterations where he has been given specific authority so to do, without keeping strictly within the terms of the authority granted to him.

25. Allow the contractor to depart in any particular from the terms of the contract, either as respects materials or as respects construction, without specific authority from the owner.

26. Assume that any general agency authority given to the architect by the owner is broader than it is.

27. Forget that a special authorization may be legally construed as limited by the other provisions of the contract, or by the general rules of the law of agency.

28. Delegate his authority to another without proper authorization.

29. Act on any point where he has any doubt of his authority, without securing specific authorization.

30. Trust to a subsequent ratification of his actions by the owner rather than secure the authority first.

31. Hesitate to get advice, before he acts, rather than after the damage is done.

32. Act, or allow his office to act, on assumptions rather than on facts.

33. Forget that the fact that he holds himself out as a practicing architect places upon him the obligation to use reasonable skill and care in the practice of his profession.

34. Assume that the fact that the work done unexpectedly proves to be more expensive for the contractor than the latter anticipated, or that the contractor has been suddenly confronted with difficulties, for which he had not provided, is necessarily a justification for an extra charge by the contractor.

35. Lose sight of the distinction between extra work agreed upon or made necessary, after the execution of the contract, and extra work provided for under the preliminary understanding, but before the

contract has gone into effect, and so merged in the the contract when executed.

36. Prepare plans and specifications, without providing, in effect, that they shall co-operate, and that any work shown in the plans, and not in the specifications, or vice versa, shall nevertheless be performed.

37. Accept authority from, or enter into contracts with, corporations, where large amounts and vital interests may be involved, without obtaining satisfactory proof that the authority or agreements have been properly granted and executed.

38. Forget that the architect, as arbitrator, is called upon to act in a quasi-judicial capacity and with fairness to both sides.

39. Imagine that any clause, stating that a certain sum is to be taken as liquidated damages, necessarily operates to provide a proper liquidated damage clause, and fail to employ a form of clause, legally approved in the jurisdiction where the contract is operative.

40. Consider that the "Standard Documents" necessarily cover every case and fail to use common sense in employing them, and in applying them to a particular case.

41. Neglect to provide adequate protection for the client against the filing of mechanic's liens in any construction contract which the architect prepares.

42. Assume the responsibility of preparing the contract between the client and the contractor where the former is in a position to have it passed on by his own attorney.

43. Forget that the architect is himself entitled to a lien for the amount of his fee or allow the statutory time for the filing of the lien to expire, without action, when the payment of the fee is doubtful.

44. Attempt to prepare and file the notice of lien without legal advice.

45. Proceed with any job where the owner insists on giving orders to the contractor over the head of the architect.

46. Issue certificates, unless some one with proper accounting knowledge and training, passes upon them and verifies their correctness.

47. Arbitrarily refuse to issue a certificate without a proper basis for his action, and under circumstances which may expose him to a claim for damages on the part of the contractor.

48. Write letters thoughtlessly or without a proper understanding of their import.

49. Fail to confirm points of importance by letters or memoranda, properly prepared under competent advice.

While the foregoing summarization is made up of suggestions in the negative, the final thought that I would leave in the mind of the architect is a positive one. Paradoxical as it may seem, its observance will result in the observance of substantially all of the "Don'ts" which I have listed. This positive thought is that which was one of the keynotes of the opening chapter—"Be *Definite*."

The architect who is definite in the practice of his profession—definite in his dealings with his client, with the general contractor, with the sub-contractors and with the materialmen—whatever the difficulties which may confront him, will have the comforting knowledge that his record is clear and that his practice is based upon a rational and firm foundation.

FORMS AND DOCUMENTS

SPECIAL FORMS

AGREEMENT BETWEEN ARCHITECT AND CLIENT.

(Long Form.)

AGREEMENT made..... 19..., at the City
of....., State of.....
between....., (referred to herein as the "Client"),
and....., referred to herein as the
"Architect") :—

1. The Client, who contemplates the erection at.....
..... of
(insert brief description of proposed work)
hereby employs....., as the Architect of the
above work, and requests him to perform, as such, the following services,
viz:—

(insert statement of services to be performed)

2. The Client agrees to pay to the Architect the fee, compensation
and disbursements specified in Schedule A, hereof, and in the manner and
at the times therein specified, and the Architect agrees to perform the
services specified in the above paragraph 1 hereof, upon and subject, how-
ever, to the terms and conditions specified in said Schedule A, which terms,
conditions and schedule are hereby severally agreed to by the parties, and
made a part hereof.

IN WITNESS WHEREOF, the parties have signed and sealed this
agreement the date first above stated.

..... L. S.
Client.
..... L. S.
Architect.

SCHEDULE A.

(To be printed on reverse of or on sheet attached to the above agreement)

I. The proposed cost of the work referred to in this contract is \$..... This is the amount for which it is hoped the work can be done. The Architect, however, makes no warranty or representations with respect to such cost and, should the cost exceed the amount named, the right of the Architect to receive the payments herein specified shall not be, in any way, affected thereby.

II. The Client will pay the Architect a fee of..... per cent of the aggregate cost of the work, including all fixtures and equipment embraced therein, and any landscape work as to which the Architect is consulted or performs services, provided, however, that:

1. If the work is abandoned or suspended before completion, and before a bona fide bid has been secured from a contractor and accepted, such fee percentage shall be computed upon the basis of the proposed cost of the work specified in paragraph I of this schedule.

2. If the work is abandoned or suspended before completion, but after a bona fide bid has been secured from a contractor and accepted, such fee percentage shall be computed upon the basis of the bid so accepted.

3. If a part only of the work is abandoned or suspended, the fee percentage shall be based upon the reasonable estimated cost of that portion of the work so abandoned or suspended, unless a bona fide bid has been received from a contractor and accepted covering the portion of the work so abandoned or suspended in such way that the proportionate cost thereof can be thereby determined, and in such event, the fee percentage of such portion of the work shall be based upon the proportionate cost thereof as established by such bid.

4. The fee, computed as herein provided, shall be payable as follows, viz:—

(a) Upon completion of the preliminary studies, one-fifth ($1/5$) of the entire fee.

(b) Upon completion of the specifications and general working drawings (exclusive of details), two-fifths ($2/5$) of the entire fee.

(c) The remaining two-fifths ($2/5$) of the entire fee shall be paid from time to time thereafter, as the work of the Architect progresses, and upon the rendering of bills therefor, by the Architect. The entire fee shall be paid not later than the date of the completion of the work.

(d) When any part of the work is abandoned or suspended, the Architect shall be paid the portion of the fee which has then accrued thereon, under the foregoing subdivisions (a), (b) and/or (c) and, in addition thereto, the proportionate value of any services then performed by him in connection with the abandoned or suspended work, but not yet payable under the terms of said subdivisions.

5. Until a bona fide bid for the work is received from a contractor and accepted, the charges shall be computed upon the proposed

cost of the work as specified in paragraph I of this schedule, and the payments received on such charges shall be applied on account of the entire fee, as the same is finally computed, in accordance herewith.

6. If, after preliminary studies, sketches, specifications or working drawings have been submitted, the Architect is requested to prepare additional and substantially changed studies, sketches, specifications or working drawings, he shall, in addition to his compensation hereunder for those first submitted, be paid for any so changed and submitted on the same basis as that herein provided for those first submitted. If the scope of the work or the manner of its execution is otherwise materially changed, or if the Client makes a decision or request, for the proper execution of which extra service or expense is involved, or if the Architect is called upon to perform additional services as a result of the delinquency, insolvency or negligence of the Client or the Contractor, or of damage by fire or any other cause, not the fault of the Architect, he shall be paid by the Client, such extra expense and the reasonable value of such extra services.

7. It is the present intention that the work shall be let under one fixed cost contract, and the fee percentage referred to in paragraph II of this schedule is specified on that basis. Should any portions of the work be executed under a separate contract, or under a cost plus percentage contract, the Architect shall, in such event, be paid a fee of..... per cent on the aggregate cost of the work done under any such separate or cost plus percentage contract or contracts.

8. In the event that the contract price shall be varied by the Client receiving and accepting a credit, for the omission or modification of any work covered by the contract, or otherwise, the Architect shall, nevertheless, be paid for the services performed by him up to the time of such acceptance, upon the basis of payment herein specified.

9. No deduction shall be made from the Architect's fee on account of any penalty, liquidated damages or other sums incurred by, or withheld from, any contractor or subcontractor or materialman.

10. Where the Architect is called upon for advice or services in connection with the purchase or installation of fabrics, furniture, decorative work, furnishings or special fixtures, the aggregate cost thereof shall be included in the total cost of the work upon which the percentage of the Architect is charged, it being understood, however, that wherever there is allowed to the Architect a commission on the purchase of any such fabrics, furniture, decorative work, furnishings or fixtures, by those manufacturing or selling them, the Architect is to give to the Client the benefit of this commission, and the amount so allowed by him to the Client shall not be included in the cost thereof in computing such percentage. Where special designs are provided by the Architect for fabrics, furniture, lighting or other fixtures, special interior cabinet or decorative work, or work of a similar character, the Client shall pay to the Architect on the aggregate cost of all items for which such designs are provided, a commission of..... per cent. If the Architect is called upon to give advice or services in connection with the installation of special antiques or the like belonging to the Client, or not purchased for the building in the ordinary course, the Architect shall receive, in

addition to the fee otherwise specified herein, the reasonable value of any such advice and services given or rendered by him.

III. The Client shall pay to the Architect, upon the rendering by the Architect of bills therefor, the disbursements incurred by the Architect, his assistants and employees, in the discharge of their duties in connection with the work.

IV. When the Architect deems it necessary, the Client shall furnish to the Architect, without expense to the latter, a complete and accurate survey of the building site, and an accurate survey and details of such grades, lines, restrictions, boundaries and contours, as the Architect may deem necessary, and full information as to sewer, water, gas and electric facilities. The Client shall pay for all test borings or pits, and for all chemical, mechanical or other tests where the same are found to be necessary or advisable, and wherever heating, ventilating, mechanical, structural, electric or sanitary problems are of such a nature as to require the services of a specialist or expert, the Client shall pay for such services.

V. Wherever the Architect deems it necessary for the protection of the interests of the Client (as distinguished from the interests of the Architect), to secure legal services, in connection with the work, he may do so and the Client will pay the reasonable expense of such services.

VI. The Client shall give full and prompt attention to all sketches, drawings, specifications, bids, contracts and other documents and matters submitted to him by the Architect, and advise the Architect of his decisions with respect to them promptly, and in time for the Architect to carry out his duties in due season and without delay.

VII. The supervision to be provided by the Architect is the ordinary and customary supervision of an Architect, as distinguished from the more detailed and continuous supervision provided by a resident superintendent or a clerk of the works. If such a superintendent or clerk of the works is desired, he shall be employed by the Client with the approval of the Architect and his salary and expense shall be paid by the Client. His employment shall neither decrease nor increase the responsibilities of the Architect hereunder. The Architect will endeavor to guard the Client against defects and deficiencies in the work of the contractors. He does not, however, in any way guarantee the proper performance of any contracts or guarantee the Client against defective or improper work or material.

VIII. While the Architect, if the Client so desires, will make or procure preliminary estimates on the cost of the work or any part thereof, and will endeavor to keep the actual cost of the work as low as may be consistent with the purpose and character of the building and with proper workmanship and material, no estimate at any time procured or submitted by the Architect is to be construed, in any way, as a representation, agreement or guarantee on the part of the Architect of the correctness of such estimate or that the work can or will be done for the amount thereof.

IX. Nothing herein contained shall be construed as preventing the Client at any time from discontinuing the work herein referred to, but in the event of such discontinuance, the Architect is to receive prompt payment of the full amount due to him at that time under the provisions hereof. If the work is suspended or abandoned and later proceeded with, however, the Architect shall be entitled to act, if he is then willing to do so, as the Architect for the completion of the work, under the same terms and conditions as to his compensation and employment as those herein set forth. In

no event shall the Client or any other Architect or any contractor, directly or indirectly, use, or be allowed to use, the studies, plans, drawings, details or specifications of the Architect for the completion of the work, unless the Architect is given the opportunity to himself continue as the Architect thereof, and refuses or is unable so to do, in either of which events the work may be completed, in accordance with the plans and specifications of the Architect, provided the Architect is paid a commission of..... per cent on the total cost of such completion. The Architect similarly may at any time withdraw as Architect of the work in question, and in the event of such withdrawal, shall be paid the amount due to him under the terms hereof at the time of his withdrawal.

X. Any and all studies, sketches, drawings, plans, details and specifications shall in any event and at all times be and remain the property of the Architect.

XI. Except as may be otherwise provided herein, the rights and obligations of the Architect and the Client shall be determined by the Schedule of practice and minimum charges and canons of ethics of the American Institute of Architects in force at the date of this agreement, as modified by the Schedule of practice and minimum charges of the..... Chapter of such Institute, then in force.

XII. Any and all legal questions arising out of this agreement shall be determined by and in accordance with the Laws of the State of.....

.....L. S.
.....L. S.

AGREEMENT BETWEEN ARCHITECT AND CLIENT.

(Intermediate Form.)

AGREEMENT made..... 19..., by and between
....., referred to herein as the "Client,"
and....., referred to herein as the
"Architect."

I. The Client, who proposes to erect.....
.....
at.....
and at a proposed cost of \$....., employs
.....
as Architect of the foregoing work, and to perform the following services:
.....
.....
.....
.....

The Architect agrees to perform said services with the exercise of reasonable diligence and care, and to endeavor to the best of his ability to guard the Client against defects and deficiencies in the work of the contractor. He does not, however, in any way guarantee the performance of the contract by the contractor or insure the client against defective work or materials. The supervision to be provided hereunder is the ordinary and customary supervision of an Architect. Where supervision of a more detailed or continuous character is desired, a clerk of the works or resident superintendent shall be employed by the Client at the latter's expense, but with the approval of the Architect. Such employment shall not decrease or increase the responsibilities or rights of the Architect hereunder.

II. The Client will pay the Architect his disbursements and a basic fee of..... per cent of the total cost of the work, including any furniture, decorations, interior fittings or fixtures or landscape work on which the Architect is consulted or in connection with which he performs services. If the work is discontinued in whole or in part before completion and before a bid therefor from a contractor has been received and accepted, the Architect's fee on the work discontinued shall be computed on the basis of the proposed cost mentioned in paragraph I. If the work be discontinued in whole or in part before completion, but after a bid is received and accepted, the fee on the work discontinued shall be computed on the basis of the amount of such bid. The Architect shall receive one-fifth of the fee on the completion of the preliminary studies, two-fifths on completion of the specifications and general working drawings, exclusive of details, and the remaining two-fifths from time to time thereafter as the work of the Architect progresses and upon the rendering of bills therefor by the Architect. The entire fee shall be paid not later, in any event, than the completion of the work. In case of the suspension or discontinuance of the work, the Architect shall be paid the percentage of the fee which has then accrued under the foregoing provisions and, in addition, the proportionate value of the additional services then performed, but for which payment would not then be due hereunder, in the event that the work had not been suspended or discontinued. If the work be later proceeded with, the

Architect shall, if he desires to do so, act as the Architect thereof to completion and, unless he be allowed to do so, none of his studies, plans, specifications or details shall be in any way used in connection with the completion of the work, except that, if he fails to undertake the completion of the work when requested to do so, the work may be completed in accordance with his plans and specifications, upon payment to him of a fee of..... per cent on the total cost of the completion of the work.

III. No estimates given by the Architect shall be in any way construed as guarantees or representations of their correctness or that the work can be done for the amount thereof, and the Architect does not guarantee the Client against defective or improper work or material.

IV. Any and all studies, sketches, drawings, plans, details and specifications shall be and remain the property of the Architect.

V. Except as above provided, the obligations and rights of the parties shall be in all ways governed by the schedule of practice and minimum charges and canons of ethics of the American Institute of Architects, as supplemented by the schedule of practice and minimum charges of the Chapter of such Institute, in force at the date of this agreement.

.....L. S.
L. S.

AGREEMENT BETWEEN ARCHITECT AND CLIENT.

(Short Form.)

AGREEMENT, made at the City of.....,
State of....., 19...,
between..... (referred to herein as the
"Client"), and..... (referred to herein
as the "Architect").

1. The "Client," who proposes to erect a.....,
at..... Street, City of.....,
State of....., employs the Architect as the Architect
for the foregoing work, and agrees to pay to him his disbursements and
a basic fee of..... per cent on the total cost of the work.

2. The Architect is to perform the following services:

.....
.....
.....
.....

3. Except as above provided, the respective rights, duties and liabilities of the parties, the one to the other, shall be in all ways determined by and in accordance with the provisions of the schedule of practice and minimum charges of the American Institute of Architects, hereto attached, as supplemented by the schedule of practice and minimum charges of the.....Chapter of such Institute, hereto attached.

.....L. S.
.....L. S.

AGREEMENT BETWEEN OWNER AND CONSULTING ARCHITECT.

THIS AGREEMENT, made..... 19..., at the City and State of New York by and between....., a New York corporation, having its principal office at No., in the City and State of New York, hereinafter called the "Client," and..... an Architect with offices at No..... in the City and State of New York, hereinafter called the "Consultant," WITNESSETH:

WHEREAS the Client proposes to erect a Hotel in the City of New York and State of New York, on the property bounded by

and known as No....., New York City; and

WHEREAS the Client desires to procure Consultant as Consulting Architect for professional services and work hereinafter more fully set forth;

NOW, THEREFORE, in consideration of one dollar and of the mutual promises herein contained, it is agreed by and between the parties hereto as follows:—

1. The Consultant will render professional services and perform the work hereinafter stated on the terms and conditions hereinafter set forth. The Client will pay Consultant therefore a sum equal to 1% the cost of the work as his fee, and, in addition, the costs of the work to the Consultant and reimbursement as hereinafter set forth.

2. The Consultant's services shall consist of the following:

(a) Necessary preliminary conferences with the Client and with....., the Architect of the Hotel, herein referred to as the "Architect."

(b) The preparation of preliminary sketches at the scale of 1/16 inch to the foot, which will include approximate layout of the Basement, Main Floor, Mezzanine Floor and Typical Floor plans.

(c) After the approval of the above mentioned preliminary sketches, the development and completion of general layouts of all floors, and of block sections and block elevations at the scale of 1/8 of an inch to the foot. These drawings will only indicate the locations of such major columns, trusses, horizontal and vertical duct spaces, partitions, public spaces, service departments, and such other information as, in the opinion of the Consultant, will properly express the intent of the general layout and will permit the Architect to proceed with the working drawings.

(d) The preparation of a Memorandum Specification for materials and equipment, sufficient for a Contractor familiar with Hotel construction to make a close approximate estimate of the cost of the building.

(e) The computation of the cubical contents of the building and opinion of the Consultant as to the approximate cost of the Hotel fully equipped and ready for occupancy, except for the loose furniture, etc.

(f) Copies of the above mentioned studies and memorandum specifications for the Architect of the building to be developed by the Architect into general working drawings and specifications.

(g) During the development by the Architect of the approved studies into working drawings and specifications, the Consultant will advise with the Client and Architect as to details of the requirements for the building.

(h) The Consultant will furnish to the Client necessary data and sketches, supplementary to and explanatory of his advice, but in no case will the services of the Consultant include the furnishing of complete specifications or working drawings for the structure or equipment.

(i) The services of the Consultant do not include the direction or supervision of the Architect's work, nor is the Consultant to be held responsible for the correctness or completion of the same.

(j) Inasmuch as the Consultant has extensive data pertaining to Hotel work in his office in New York City, all conferences shall, so far as possible, be held at such office. If occasions arise which will require the attention of the Consultant or of a member or representative of his firm elsewhere than in New York, the Consultant is to be paid at the rate of Dollars per day for the time while away from New York, of himself or each member or representative of the firm attending such conferences.

3. CONSULTANT'S COSTS: The Consultant shall maintain an efficient and accurate cost keeping system as to all costs incurred by him in connection with the subject of this agreement, and his accounts at all reasonable times shall be open to the inspection of the Client or his authorized representatives.

For the purpose of this agreement, the Consultant's cost above referred to shall be based upon the actual cash outlay incurred by him, plus one hundred per cent (100%) to cover the general overhead; the outlay being all those items identified as directly chargeable to the job, such as salaries for members of the firm (at the rate of Dollars per hour) for the time actually spent on the work, draughtsmen, engineers, specification writers, superintendence, blue-printing, mimeographing, long distance telephone calls, telegrams, express charges, etc.

4. REIMBURSEMENT: The Client agrees to reimburse the Consultant the costs of transportation and living expenses incurred by him and his assistants while traveling in discharge of the duties connected with the work, but no overhead is to be charged on such costs.

5. PAYMENTS: On or about the first and the fifteenth of each month, the Consultant shall submit to the Client a statement of the costs to him and reimbursement charges, and the Client, upon receipt of each statement shall promptly pay to the Consultant the full amount thereof.

Whether the work be executed or whether its execution be suspended or abandoned in part or whole, payments to the Consultant on his fee are to be made as follows:

Upon the completion of preliminary sketches at the scale of 1/16 inch to the foot establishing the general arrangement of the plans, a sum equal to twenty per cent (20%) of the fee. Upon completion of the studies developed at the scale of 1/8 inch to the foot, with a Memorandum Specifi-

cation a sum sufficient to increase payments on fee to sixty per cent (60%) of its amount. The balance to be paid upon completion by the Architect of the general working drawings and specifications for the Hotel.

6. It is further understood and agreed that, if a new agreement should be hereafter made between the Client and the Consultant, whereby the Consultant is employed to render full architectural services as Architect for the Hotel, all payments theretofore made to the Consultant hereunder on his Fee and on his Costs (except reimbursements of traveling expenses and disbursements) shall apply on account of the commission payable to the Architect under said new agreement.

7. EXTRA SERVICE: If additional services of the Consultant are made necessary by the delinquency or insolvency of either the Client or the Architect of the building or the Contractor, or, as the result of damage by fire, he shall be paid by the Client the reasonable value of such extra services.

8. The Consultant does not guarantee the Client against defective work or materials, and no estimate furnished by the Architect is to be construed as a warranty that the work covered thereby can or will be performed for the amount thereof.

IN WITNESS WHEREOF, the Client has caused this instrument to be executed by its President, thereunto duly authorized, and its corporate seal to be hereunto affixed and attested by its Secretary, and the Consultant has hereunto set his hand and seal the day and year first above written.

Attest:
 By.....
 Secretary President.

Witness:
 L. S.

STATE OF NEW YORK
 COUNTY OF NEW YORK } ss.

On this.....day of....., 19..., before me personally came....., to me known, who being by me duly sworn, did depose and say: that he is the President of, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation and that he signed his name thereto by like order.

STATE OF NEW YORK
 COUNTY OF NEW YORK } ss.

On this.....day of....., 19..., before me personally came and appeared....., to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same for the uses and purposes therein described.

CO-PARTNERSHIP AGREEMENT BETWEEN ARCHITECTS.

AGREEMENT made this day of 192...., between JOHN SMITH of and RICHARD JONES of

WHEREAS, the parties hereto desire to form a co-partnership for the practice of architecture on the following terms and conditions:

NOW, THEREFORE in consideration of one dollar (\$1), paid by each to the other, the receipt of which is severally acknowledged, and of the covenants herein set forth, the parties hereby agree as follows:

1. The parties hereto hereby form a co-partnership for the general practice of architecture under the firm name of SMITH & JONES, with offices at No. Street, City of

2. The term of the partnership shall be for three years, and the partnership shall thereafter continue for successive terms of three years, unless notice of termination thereof be given by either party to the other in writing, not less than six months prior to the end of any three year period.

3. All expenses of conducting the firm practice, including all overhead and operating expenses of every kind shall be borne equally by the partners, and all net profits of the firm shall be divided equally between them.

(Where there is not an even sharing and distribution of losses and gains, provide as follows:

All expenses of the firm, including overhead and operating charges, shall be borne in the following proportions, viz: by Mr. Smith..... per cent thereof, by Mr. Jones per cent thereof. All of the net profits of the firm shall be distributed between the partners in the following proportions: to Mr. Jones per cent thereof, to Mr. Smith per cent thereof.)

4. Upon the termination of the partnership, a balance shall be struck as of the date of termination, and the firm liquidated as promptly as may be practical and, after the payment of all firm indebtedness, the profits shall be divided between the partners, or, in the event of the death of either partner, between the surviving partner and the estate of the deceased partner, in accordance with the terms hereof. The death of either partner shall terminate the partnership and the same shall be considered terminated as of the date of such death.

IN WITNESS WHEREOF, the parties have signed and sealed this agreement, the day and year first above written.

In the presence of:
.....
as to both parties.

.....L. S.
.....L. S.

AGREEMENT BETWEEN ARCHITECTS ASSOCIATED IN PRACTICE,
BUT NOT PARTNERS.

AGREEMENT made this day of
....., 192...., between JOHN SMITH of
....., and RICHARD JONES, of

WHEREAS the parties are architects and desire to form an asso-
ciation for the practice of architecture, on the terms hereinafter stated;

NOW, THEREFORE, in consideration of one dollar (\$1), paid
by each of the parties to the other, receipt of which is severally acknowl-
edged, and of the agreements hereinafter set forth, the parties hereto
hereby agree as follows, viz:

1. The parties hereby become associated as architects for the practice
of their profession under the name of

“JOHN SMITH
RICHARD JONES
ASSOCIATED ARCHITECTS”

for a term of three years from the date hereof, and with offices at No.
.....Street, City and State of.....

All letterheads and correspondence of the associates and plans shall be
entitled “John Smith, Richard Jones, Associated Architects,” as above.

2. All of the charges for operating and maintaining the offices of the
associates, including all overhead, salaries, rent, draftsmen’s charges and
the like, shall be borne equally by the associates. All fees paid to the
associates on work for clients of Mr. Smith shall be paid to him, and all
fees paid to the Associates by clients of Mr. Jones shall be paid to Mr.
Jones.

(If all expenses of the office are not shared and draftsmen’s salaries, for
instance, are not included, the foregoing clause should be adapted to the
actual facts.)

3. The Associates shall maintain a bank account in the above Asso-
ciate name, which can be drawn upon by either of the Associates. In case
of the death of either of the Associates, prior to the expiration of said
three years’ period, the Association agreement shall thereupon terminate.
A balance shall be struck as of the date of such death by the surviving
partner, and he shall pay over to the estate of the deceased partner any
and all balance due thereto under the terms hereof. It is specifically
understood and agreed that nothing herein contained shall be construed as
creating any partnership relation as between the parties hereto.

IN WITNESS WHEREOF, the parties have signed and sealed this
agreement, the day and year first above written.

In the presence of:

.....
as to both parties.

.....L. S.
.....L. S.

AGREEMENT BETWEEN ARCHITECTS FOR ASSOCIATION ON A PARTICULAR JOB.

AGREEMENT between JOHN SMITH of
and RICHARD JONES of....., Architects:

WHEREAS the parties are architects duly practicing their profession as such, and desire to be associated on the terms hereinafter set forth, in connection with the following job, viz:

NOW, THEREFORE, in consideration of the agreements herein set forth, and of one dollar (\$1), paid by each of the parties to the other, receipt of which is hereby severally acknowledged, the parties hereby agree as follows:

1. The parties shall act as associates in the preparation of all studies, drawings, plans, details and the like, and the performance of all architectural services, including supervision, in connection with the above-named job.

2. The work on the foregoing job shall be apportioned between the parties as nearly equally as possible and, so far as may be practical, Mr. Smith will attend to the following details of the work, viz:

and Mr. Jones will attend to the following details thereof, viz:

3. All of the expenses incident to the services performed by the Associates on the above job shall be borne by them in equal shares, and all net profits and fees received therefrom shall be paid to them in equal shares.

4. No partnership is hereby created between the parties, except in so far as this agreement may be construed as a partnership with respect to the particular job above named.

IN WITNESS WHEREOF, the parties have signed and sealed this agreement, the day of....., 192....
In the presence of:

.....

as to both parties.

.....L. S.
.....L. S.

AGREEMENT BETWEEN ARCHITECT AND LANDSCAPE ARCHITECT.

AGREEMENT made this day of
....., 192....., between JOHN SMITH of
....., and RICHARD JONES of

WHEREAS Mr. Smith is the architect of the following job:

and Mr. Jones is to act as landscape architect in connection therewith, and the parties desire to outline their respective spheres of activity and rights in connection with the foregoing work;

NOW, THEREFORE, in consideration of one dollar (\$1), paid by each to the other, receipt of which is severally acknowledged, and of the covenants hereinafter set forth, the parties hereby agree as follows:

1. It is understood that the work of the architect covers, in addition to all buildings, the following described work, viz:
(set out in detail here work covered by the architect's drawings, such as driveways, service walls and the like.)

2. The services of the landscape architect cover and are confined to the following work, viz:
(insert description of work to be performed exclusively by the landscape architect, such as gardens, planting, etc.)

3. The landscape architect is not to share in any way on the commissions payable to the architect on the work to be done by the latter, as above, and the architect is not to share in any way on the commissions payable to the landscape architect on the work to be performed by him as above.

IN WITNESS WHEREOF, the parties have signed and sealed this agreement the day and year first above written.

In the presence of:

.....
as to both parties.

.....L. S.
.....L. S.

(Note: If there is an actual over-lapping of services by the architects on a certain item on part of the work, it should be provided that, as to that particular part, the commissions accruing shall be divided between the parties in a stated proportion.)

COST PLUS FORM OF CONTRACT BETWEEN ARCHITECT AND CLIENT.

AGREEMENT, made, 192...., at the City of, between, referred to herein as the Architect, and, referred to herein as the Client.

The Client, who proposes to erect a residence at employs the Architect to act as the architect thereof, and the Architect accepts said employment upon the following terms and conditions, viz:

The Architect will prepare preliminary studies, working drawings, $\frac{3}{4}$ or full size detail drawings and specifications for the above residence, and will supervise the construction thereof to completion.

The Client will pay to the Architect, for his services as above, a fee of \$....., and, in addition thereto, will pay to the Architect the actual cost to the Architect of the above services, plus 100% of such cost to cover general overhead. The Architect will maintain proper accounts showing the cost of the work to him, and said cost shall include all items identified as directly chargeable to the work, such as the time of the Architect, at the rate of \$..... per hour for the time actually spent thereon, the salaries of draftsmen, engineers, specification writers, and the cost of superintendence, blue-printing, express charges, travelling expenses and the like. The above fee shall be paid as follows: one-fifth thereof, when the preliminary studies are prepared; an additional two-fifths thereof when the working drawings, exclusive of details, are prepared; and the balance thereof from time to time thereafter as the work of the Architect progresses and upon the rendering of bills by him therefor. The additional payments to the Architect, above provided for, representing the cost of the work to him and overhead charges as specified, shall be paid to him from time to time as his work progresses, upon the rendering by him of bills therefor.

It is understood that no estimates given by the Architect are to be considered as guarantees or representations by him with respect to the cost of the work or as affecting his right to compensation.

In the event that the work is let under separate contracts, the above fee to be paid to the Architect shall be \$....., instead of the amount stated.

In the event that the Client orders the preparation of additional and substantially different sketches, studies, plans, drawings and specifications, requiring the preparation of any of these documents anew by the Architect, or if the Client requires changes to be made, or gives directions requiring additional or extra services of the Architect, or if the Architect is put to expense by any default or delay, on the part of the Client in proceeding with the work, the Architect shall be paid the reasonable value of the extra services and expense rendered and incurred by him.

It is understood and agreed, however, that the work may be discontinued at any time by the Client and that the Architect may withdraw as such at any time and that, in the event of such discontinuance or withdrawal, the Architect shall be thereupon paid the proportionate amount of his fee, and all of his actual costs, and overhead as herein provided then accrued, and in addition thereto the proportionate value of any services then performed by him in connection with the work but which would not then have been payable to him hereunder if the work had been proceeded with or if he had not so withdrawn as Architect. Where the work is dis-

continued by the Client, neither the client nor any other architect or contractor shall, directly or indirectly, use or be allowed to use the studies, plans, details or specifications of the Architect for the completion of the work, unless the Architect be given the opportunity to himself continue as the architect of the work to completion and refuses or is unable so to do, in either of which events the work may be completed in accordance with the plans and specifications of the Architect (which shall, however, continue as the property of the Architect), provided the Architect be paid the balance of the fee above specified.

All studies, sketches, drawings, plans, details and specifications are and shall at all times remain the property of the Architect.

Except as may be otherwise provided herein, the rights and obligations of the Architect and Client shall be determined by the Schedule of Practice and Minimum Charges of the American Institute of Architects in force at the date of this agreement.

.....L. S.
.....L. S.

FORMS AND DOCUMENTS OF THE AMERICAN
INSTITUTE OF ARCHITECTS
(Published by Courtesy of the Institute.)

THE STANDARD FORM OF AGREEMENT BETWEEN OWNER AND
ARCHITECT

ISSUED BY THE AMERICAN INSTITUTE OF ARCHITECTS FOR USE WHEN A
PERCENTAGE OF THE COST OF THE WORK FORMS THE BASIS OF PAYMENT.

SECOND EDITION—COPYRIGHT 1917 BY THE AMERICAN INSTITUTE OF
ARCHITECTS, WASHINGTON, D. C.

THIS AGREEMENT made the.....day of
.....in the year Nineteen Hundred and.....
by and between.....
hereinafter called the Owner, and.....
.....hereinafter called the Architect,
WITNESSETH, that whereas the Owner intends to erect.....
.....

NOW, THEREFORE, the Owner and the Architect, for the con-
siderations hereinafter named, agree as follows:

The Architect agrees to perform, for the above-named work, pro-
fessional services as stated in Article I of the "Conditions of Agreement
between Owner and Architect," hereinafter set forth.

The Owner agrees to pay the Architect at the rate of.....
per cent, hereinafter called the basic rate, computed and payable as stated
in the said "Conditions," and to make any other payments and reimburse-
ments arising out of the said "Conditions."

.....

CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT.

Article 1. The Architect's Services.—The Architect's professional services consist of the necessary conferences, the preparation of preliminary studies, working drawings, specifications, large scale and full size detail drawings; the drafting of forms of proposals and contracts; the issuance of certificates of payment; the keeping of accounts, the general administration of the business and supervision of the work.

2. The Architect's Fee.—The fee payable by the Owner to the Architect for the performance of the above services is the percentage hereinbefore defined as the basic rate, computed upon the cost of the work in respect of which such services have been performed, subject, however, to any modifications growing out of these Conditions of Agreement.

3. Reimbursements.—The Owner is to reimburse the Architect the costs of transportation and living incurred by him and his assistants while travelling in discharge of duties connected with the work, and the costs of the services of heating, ventilating, mechanical, and electrical engineers.

4. Separate Contracts.—The basic rate as hereinbefore defined is to be used when all of the work is let under one contract. Should the Owner determine to have certain portions of the work executed under separate contracts, as the Architect's burden of service, expense, and responsibility is thereby increased, the rate in connection with such portions of the work shall be four per cent greater than the basic rate. Should the Owner determine to have substantially the entire work executed under separate contracts, then such higher rate shall apply to the entire work. In any event, however, the basic rate shall, without increase, apply to contracts for any portions of the work on which the Owner reimburses the Engineer's fees to the Architect, and to the cost of articles not designed by the Architect but purchased under his direction.

5. Extra Services and Special Cases.—If after a definite scheme has been approved, the Owner makes a decision which, for its proper execution, involves extra services and expense for changes in or additions to the drawings, specifications or other documents; or if a contract be let by cost of labor and material plus a percentage or fixed sum; or if the Architect is put to labor or expense by delays caused by the Owner or a contractor, or by the delinquency or insolvency of either, or as a result of damage by fire he shall be equitably paid for such extra service and expense.

Should the execution of any work designed or specified by the Architect, or any part of such work be abandoned or suspended, the Architect is to be paid in accordance with or in proportion to the terms of Article 6 for the service rendered on account of it up to the time of such abandonment or suspension.

6. Payments.—Whether the work be executed or whether its execution be suspended or abandoned in part or whole, payments to the Architect on his fee are, subject to the provisions of Article 5, to be made as follows:

Upon completion of the preliminary studies, a sum equal to 20% of the basic rate computed upon a reasonable estimated cost.

Upon completion of specifications and general working drawings (exclusive of details) a sum sufficient to increase payments on the fee to 60% of the rate or rates of commission arising from this agreement, computed

upon a reasonable cost estimated on such completed specifications and drawings, or if bids have been received, then computed upon the lowest bona fide bid or bids.

From time to time during the execution of work and in proportion to the amount of service rendered by the Architect, payments shall be made until the aggregate of all payments made on account of the fee under this Article, but not including any covered by the provisions of Article 5, shall be a sum equal to the rate or rates of commission arising from this agreement, computed upon the final cost of the work.

Payments to the Architect, other than those on his fee, fall due from time to time as his work is done or as costs are incurred.

No deduction shall be made from the Architect's fee on account of penalty, liquidated damages, or other sums withheld from payments to contractors.

7. The Owner's Decisions.—The Owner shall give thorough consideration to all sketches, drawings, specifications, proposals, contracts, and other documents laid before him by the Architect and, whenever prompt action is necessary, he shall inform the Architect of his decisions in such reasonable time as not to delay the work of the Architect nor to prevent him from giving drawings or instructions to contractors in due season.

8. Survey, Borings, and Tests.—The Owner shall furnish the Architect with a complete and accurate survey of the building site, giving the grades and lines of streets, pavements, and adjoining properties; the rights, restrictions, easements, boundaries, and contours of the building site, and full information as to sewer, water, gas, and electrical service. The Owner is to pay for borings or test pits and for chemical, mechanical, or other tests when required.

9. Supervision of the Work.—The Architect will endeavor to guard the Owner against defects and deficiencies in the work of contractors, but he does not guarantee the performance of their contracts. The supervision of an architect is to be distinguished from the continuous personal superintendence to be obtained by the employment of a clerk-of-the-works.

When authorized by the Owner, a clerk-of-the-works acceptable to both Owner and Architect shall be engaged by the Architect at a salary satisfactory to the Owner and paid by the Owner, upon presentation of the Architect's monthly certificates.

10. Preliminary Estimates.—When requested to do so, the Architect will make or procure preliminary estimates on the cost of the work and he will endeavor to keep the actual cost of the work as low as may be consistent with the purpose of the building and with proper workmanship and material, but no such estimate can be regarded as other than an approximation.

11. Definition of the Cost of the Work.—The words "the cost of the work" as used in Articles 2 and 6 hereof are ordinarily to be interpreted as meaning the total of the contract sums incurred for the execution of the work, not including Architect's and Engineer's fees, or the salary of the Clerk-of-the-Works, but in certain rare cases, e. g., when labor or material is furnished by the Owner below its market cost or when old materials are re-used, the cost of the work is to be interpreted as the cost of all materials and labor necessary to complete the work, as such cost would have been if all materials had been new and if all labor had been fully paid at market prices current when the work was ordered, plus contractor's profits and expenses.

12. Ownership of Documents.—Drawings and specifications as instruments of service are the property of the Architect whether the work for which they are made be executed or not.

13. Successors and Assignment.—The Owner and the Architect, each binds himself, his successors, executors, administrators, and assigns to the other party to this agreement, and to the successors, executor, administrators, and assigns of such other party in respect of all the covenants of this agreement.

The Architect shall have the right to join with him in the performance of this agreement, any architect or architects with whom he may in good faith enter into partnership relations. In case of the death or disability of one or more partners, the rights and duties of the Architect, if a firm, shall devolve upon the remaining partner or partners or upon such firm as may be established by him or them, and he, they or it shall be recognized as the "successor" of the Architect, and so on until the service covered by the agreement has been performed. The Owner shall have the same rights, but in his case no limitation as to the vocation of those admitted to partnership is imposed.

Except as above, neither the Owner nor the Architect shall assign, sublet or transfer his interest in this agreement without the written consent of the other.

14. Arbitration.—All questions in dispute under this agreement shall be submitted to arbitration at the choice of either party.

No one shall be nominated or act as an arbitrator who is in any way financially interested in this contract or in the business affairs of either party.

The general procedure shall conform to the laws of the State in which the work is to be erected. Unless otherwise provided by such laws, the parties may agree upon one arbitrator; otherwise there shall be three, one named in writing by each party and the third chosen by these two arbitrators, or if they fail to select a third within ten days, then he shall be chosen by the presiding officer of the Bar Association nearest to the location of the work. Should the party demanding arbitration fail to name an arbitrator within ten days of his demand, his right to arbitration shall lapse. Should the other party fail to choose an arbitrator within said ten days, then such presiding officer shall appoint such arbitrator. Should either party refuse or neglect to supply the arbitrators with any papers or information demanded in writing, the arbitrators are empowered by both parties to proceed *ex parte*.

The arbitrators shall act with promptness. If there be one arbitrator his decision shall be binding; if three, the decision of any two shall be binding. Such decision shall be a condition precedent to any right of legal action, and wherever permitted by law it may be filed in Court to carry it into effect.

The arbitrators shall fix their own compensation, unless otherwise provided by agreement, and shall assess the costs and charges of the arbitration upon either or both parties.

The award of the arbitrators must be in writing and, if in writing, it shall not be open to objection on account of the form of the proceedings or the award, unless otherwise provided by the laws of the State in which the work is to be erected.

The Owner and the Architect hereby agree to the full performance of the covenants contained herein,

IN WITNESS WHEREOF they have executed this agreement, the
day and year first above written.
In Presence of

..... } as to

..... } as to

A FORM OF
AGREEMENT BETWEEN OWNER AND ARCHITECT
ON THE FEE PLUS COST SYSTEM.

COPYRIGHT 1917 BY THE AMERICAN INSTITUTE
OF ARCHITECTS, THE OCTAGON, WASHINGTON, D. C.

THIS AGREEMENT made the
day of.....in the year Nineteen Hundred and.....
by and between.....
hereinafter called the Owner, and.....
.....hereinafter called the Architect
WITNESSETH, that whereas the Owner intends to erect.....
.....
(Add here brief description of scope and manner of execution of work.)

NOW, THEREFORE, the Owner and the Architect, for the considera-
tions hereinafter named, agree as follows:

The Architect agrees to perform for the above-named work, profes-
sional services as stated in Article 1 of the "Conditions of Agreement
between Owner and Architect" hereinafter set forth.

The Owner agrees to pay the Architect the sum of.....
.....dollars (\$.....)
as his fee, of which.....
dollars (\$.....) is to be paid in.....equal installments
monthly, beginning....., the balance to be paid on
issuance of final certificate; and to reimburse the Architect monthly all
costs incurred by him in the performance of his duties hereunder as more
fully set forth in the said "Conditions."

The parties hereto further agree to the following:

CONDITIONS OF AGREEMENT BETWEEN OWNER AND
ARCHITECT.

Article 1. The Architect's Services.—The Architect's professional
services consist of the necessary conferences, the preparation of prelim-
inary studies, working drawings, specifications, large-scale and full-size
detail drawings; the drafting of forms of proposals and contracts; the
issuance of certificates of payment; the keeping of accounts, the general
administration of the business and supervision of the work.

2. The Architect's Fee.—The fee payable by the Owner to the Archi-
tect for his personal professional services shall be as named elsewhere in
this Agreement.

INSTITUTE FORMS AND DOCUMENTS 193

In case of the abandonment or suspension of the work or of any part or parts thereof, the Architect is to be paid in proportion to the services rendered on account of it up to the time of its abandonment or suspension, such proportion being 20% upon completion of preliminary sketches and 60% upon completion of working drawings and specifications.

If the scope of the work or the manner of its execution is materially changed subsequent to the signing of the Agreement the fee shall be adjusted to fit the new conditions.

If additional personal service of the Architect is made necessary by the delinquency or insolvency of either the Owner or the Contractor, or as a result of damage by fire, he shall be equitably paid by the Owner for such extra service.

3. The Architect's Costs.—The Architect shall maintain an efficient and accurate cost-keeping system as to all costs incurred by him, in connection with the subject of this agreement, and his accounts, at all reasonable times, shall be open to the inspection of the Owner or his authorized representatives.

The costs referred to in this Article comprise the following items:

(a) The sums paid for drafting, including verification of shop drawings, for specification writing and for supervision of the work.

(b) The sums paid to structural, mechanical, electrical, sanitary or other engineers.

(c) The sums paid for incidental expenses such as costs of transportation or living incurred by the Architect or his assistants while traveling in discharge of duties connected with the work, costs of reproducing drawings, printing or mimeographing the specifications, models, telegrams, long distance telephone calls, legal advice, expressage, etc.

(d) A proportion of the general expenses of the Architect's office, commonly called "Overhead," representing items that cannot be apportioned in detail to this work, such as rent, light, heat, stenographer's services, postage, drafting materials, telephone, accounting, business administration, etc.

It is agreed that the charge for such general expenses shall be.....
.....per cent of item (a) of this article.

4. Payments.—On or about the first day of each month the Architect shall present to the Owner a detailed statement of the payment due on account of the fee and the costs referred to in Article 3 and the Owner shall pay the Architect the amount thereof.

5. The Owner's Decisions.—The Owner shall give thorough consideration to all sketches, drawings, specifications, proposals, contracts and other documents laid before him by the Architect and, whenever prompt action is necessary, he shall inform the Architect of his decisions in such reasonable time as not to delay the work of the Architect nor to prevent him from giving drawings or instructions to Contractors in due season.

6. Survey, Borings and Tests.—The Owner shall furnish the Architect with a complete and accurate survey of the building site, giving the grades and lines of streets, pavements and adjoining properties; the rights, restrictions, boundaries and contours of the building site, and full information as to sewers, water, gas and electrical service. The Owner is to pay for test borings or pits and for chemical, mechanical or other tests when required.

7. Supervision of the Work.—The Architect will endeavor to guard the Owner against defects and deficiencies in the work of contractors, but he does not guarantee the performance of their contracts. The supervision

of an Architect is to be distinguished from the continuous personal superintendence to be obtained by the employment of a clerk-of-the-works.

When authorized by the Owner, a clerk-of-the-works, acceptable to both Owner and Architect, shall be engaged by the Architect at a salary satisfactory to the Owner and paid by the Owner.

8. Preliminary Estimates.—When requested to do so, the Architect will make or procure preliminary estimates on the cost of the work and he will endeavor to keep the actual cost of the work as low as may be consistent with the purpose of the building and with proper workmanship and material, but no such estimate can be regarded as other than an approximation.

9. Ownership of Documents.—Drawings and specifications as instruments of service are the property of the Architect whether the work for which they are made be executed or not.

10. Successors and Assignment.—The Owner and the Architect, each binds himself, his successors, executors, administrators, and assigns to the other party to this agreement, and to the successors, executors, administrators, and assigns of such other party in respect of all the covenants of this Agreement.

The Architect shall have the right to join with him in the performance of this agreement, any architect or architects with whom he may in good faith enter into partnership relations. In case of the death or disability of one or more partners, the rights and duties of the Architect, if a firm, shall devolve upon the remaining partner or partners or upon such firm as may be established by him or them, and he, they or it, shall be recognized as the "successor" of the Architect, and so on until the service covered by the agreement has been performed. The Owner shall have the same rights, but in his case no limitation as to the vocation of those admitted to partnership is imposed.

Except as above, neither the Owner nor the Architect shall assign, sublet or transfer his interest in this agreement without the written consent of the other.

11. Arbitration.—All questions in dispute under this agreement shall be submitted to arbitration at the choice of either party.

No one shall be nominated or act as an arbitrator who is in any way financially interested in this contract or in the business affairs of either party.

The general procedure shall conform to the laws of the State in which the work is to be erected. Unless otherwise provided by such laws, the parties may agree upon one arbitrator; otherwise there shall be three, one named in writing by each party and the third chosen by these two arbitrators, or if they fail to select a third within ten days, then he shall be chosen by the presiding officer of the Bar Association nearest to the location of the work. Should the party demanding arbitration fail to name an arbitrator within ten days of his demand, his right to arbitration shall lapse. Should the other party fail to choose an arbitrator within said ten days, then such presiding officer shall appoint such arbitrator. Should either party refuse or neglect to supply the arbitrators with any papers or information demanded in writing, the arbitrators are empowered by both parties to proceed *ex parte*.

The arbitrators shall act with promptness. If there be one arbitrator his decision shall be binding; if three, the decision of any two shall be binding. Such decision shall be a condition precedent to any right of legal

INSTITUTE FORMS AND DOCUMENTS 195

action, and wherever permitted by law it may be filed in Court to carry it into effect.

The arbitrators shall fix their own compensation, unless otherwise provided by agreement, and shall assess the costs and charges of the arbitration upon either or both parties.

The award of the arbitrators must be in writing and, if in writing, it shall not be open to objection on account of the form of the proceedings or the award, unless otherwise provided by the laws of the State in which the work is to be erected.

The Owner and the Architect hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF they have executed this agreement, the day and year first above written.

.....
.....

THE STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR
AND OWNER.

ISSUED BY THE AMERICAN INSTITUTE OF ARCHITECTS FOR USE WHEN A
STIPULATED SUM FORMS THE BASIS OF PAYMENT.

THIRD EDITION, COPYRIGHT, 1915-1918, BY THE AMERICAN INSTITUTE OF
ARCHITECTS, THE OCTAGON HOUSE, WASHINGTON, D. C.

THIS FORM IS TO BE USED ONLY WITH THE STANDARD GENERAL CONDITIONS
OF THE CONTRACT.

THIS AGREEMENT made the.....
day of.....in the year Nineteen Hundred and.....
by and between.....
hereinafter called the Contractor, and.....
.....hereinafter called the Owner,
WITNESSETH, that the Contractor and the Owner for the considerations
hereinafter named agree as follows:

Article 1. The Contractor agrees to provide all the materials and to
perform all the work shown on the Drawings and described in the Speci-
fications entitled

(Here insert the caption descriptive of the work as used in the Proposal, General Con-
ditions, Specifications, and upon the Drawings.)

.....,
prepared by.....

.....
acting as, and in these Contract Documents entitled the Architect, and to
do everything required by the General Conditions of the Contract, the
Specifications and the Drawings.

Article 2. The Contractor agrees that the work under this Contract
shall be substantially completed.....

(Here insert the date or dates of completion, and stipulations as to liquidated damages,
if any.)

Article 3. The Owner agrees to pay the Contractor in current funds
for the performance of the Contract

.....(\$.....) subject
to additions and deductions as provided in the General Conditions of the
Contract and to make payments on account thereof as provided therein, as
follows: On or about the..... day of each month.....
per cent of the value, proportionate to the amount of the Contract, of labor
and materials incorporated in the work.....
.....up to the first day of that month as
estimated by the Architect, less the aggregate of previous payments. On
substantial completion of the entire work, a sum sufficient to increase the
total payments to.....per cent of the contract price, and.....
.....days thereafter, provided the work be fully completed and
the Contract fully performed, the balance due under the Contract.

Article 4. The Contractor and the Owner agree that the General Con-
ditions of the Contract, the Specifications and the Drawings, together with

this Agreement, form the Contract, and that they are as fully a part of the Contract, as if hereto attached or herein repeated; and that the following is an exact enumeration of the Specifications and Drawings:

.....
The Contractor and the Owner for themselves, their successors, executors, administrators and assigns, hereby agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF they have executed this agreement, the day and year first above written.

THE GENERAL CONDITIONS OF THE CONTRACT.

Standard Form of the American Institute of Architects.

THIRD EDITION, COPYRIGHT 1915-1918 BY THE AMERICAN INSTITUTE OF ARCHITECTS, THE OCTAGON HOUSE, WASHINGTON, D. C.

Index to the Articles of the General Conditions.

- | | |
|--|---|
| 1. Definitions. | 23. Cash Allowances. |
| 2. Documents. | 24. Changes in the Work. |
| 3. Details and Instructions. | 25. Claims for Extras. |
| 4. Copies Furnished. | 26. Applications for Payments. |
| 5. Shop Drawings. | 27. Certificates and Payments. |
| 6. Drawings on the Work. | 28. Payments Withheld. |
| 7. Ownership of Drawings. | 29. Liens. |
| 8. Samples. | 30. Permits and Regulations. |
| 9. The Architect's Status. | 31. Royalties and Patents. |
| 10. The Architect's Decisions. | 32. Use of Premises. |
| 11. Foreman, Supervision. | 33. Cleaning up. |
| 12. Materials, Appliances, Em-
ployees. | 34. Cutting, Patching and Digging. |
| 13. Inspection of Work. | 35. Delays. |
| 14. Correction Before Final Pay-
ment. | 36. Owner's Right to Do Work. |
| 15. Deductions for Uncorrected
Work. | 37. Owner's Right to Terminate
Contract. |
| 16. Correction After Final Pay-
ment. | 38. Contractor's Right to Stop
Work or Terminate Contract. |
| 17. Protection of Work and
Property. | 39. Damages. |
| 18. Emergencies. | 40. Mutual Responsibility of Con-
tractors. |
| 19. Contractor's Liability Insurance. | 41. Separate Contracts. |
| 20. Owner's Liability Insurance. | 42. Assignment. |
| 21. Fire Insurance. | 43. Subcontracts. |
| 22. Guaranty Bonds. | 44. Relations of Contractor and
Subcontractor. |
| | 45. Arbitration. |

Article 1. Principles and Definitions.—

- (a) The Contract Documents consist of the Agreement, the General Conditions of the Contract, the Drawings and Specifications, including all modifications thereof incorporated in the documents before their execution. These form the Contract.
- (b) The Owner, the Contractor and the Architect are those named as such in the Agreement. They are treated throughout the Contract Documents as if each were of the singular number and masculine gender.
- (c) The term Subcontractor, as employed herein, includes only those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.
- (d) Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an

officer of the corporation for whom it is intended, or if delivered at or sent by registered mail to the last business address known to him who gives the notice.

- (e) The term "work" of the Contractor or Subcontractor includes labor or materials or both.
- (f) All time limits stated in the Contract Documents are of the essence of the contract.
- (g) The law of the place of building shall govern the construction of this contract.

Art. 2. Execution, Correlation and Intent of Documents.—The Contract Documents shall be signed in duplicate by the Owner and Contractor. In case of failure to sign the General Conditions, Drawings or Specifications the Architect shall identify them.

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the documents is to include all labor and materials reasonably necessary for the proper execution of the work. It is not intended, however, that materials or work not covered by or properly inferable from any heading, branch, class or trade of the specifications shall be supplied unless distinctly so noted on the drawings. Materials or work described in words which so applied have a well known technical or trade meaning shall be held to refer to such recognized standards.

Art. 3. Detail Drawings and Instructions.—The Architect shall furnish, with reasonable promptness, additional instructions, by means of drawings or otherwise, necessary for the proper execution of the work. All such drawings and instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom. The work shall be executed in conformity therewith and the Contractor shall do no work without proper drawings and instructions. In giving such additional instructions, the Architect shall have authority to make minor changes in the work, not involving extra cost, and not inconsistent with the purposes of the building.

The Contractor and the Architect, if either so requests, shall jointly prepare a schedule, subject to change from time to time in accordance with the progress of the work, fixing the dates at which the various detail drawings will be required, and the Architect shall furnish them in accordance with that schedule. Under like conditions, a schedule shall be prepared, fixing the dates for the submission of shop drawings, for the beginning of manufacture and installation of materials and for the completion of the various parts of the work.

Art. 4. Copies Furnished.—Unless otherwise provided in the Contract Documents the Architect will furnish to the Contractor, free of charge, all copies of drawings and specifications reasonably necessary for the execution of the work.

Art. 5. Shop Drawings.—The Contractor shall submit, with such promptness as to cause no delay in his own work or in that of any other contractor, two copies of all shop or setting drawings and schedules required for the work of the various trades and the Architect shall pass upon them with reasonable promptness. The Contractor shall make any corrections required by the Architect, file with him two corrected copies and furnish such other copies as may be needed. The Architect's approval of such drawings or schedules shall not relieve the Contractor from responsibility for deviations from drawings or specifications, unless he has in writing

called the Architect's attention to such deviations at the time of submission, nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules.

Art. 6. Drawings and Specifications on the Work.—The Contractor shall keep one copy of all drawings and specifications on the work, in good order, available to the Architect and to his representatives.

Art. 7. Ownership of Drawings and Models.—All drawings, specifications and copies thereof furnished by the Architect are his property. They are not to be used on other work and, with the exception of the signed contract set, are to be returned to him on request, at the completion of the work. All models are the property of the Owner.

Art. 8. Samples.—The Contractor shall furnish for approval all samples as directed. The work shall be in accordance with approved samples.

Art. 9. The Architect's Status.—The Architect shall have general supervision and direction of the work. He is the agent of the Owner only to the extent provided in the Contract Documents and when in special instances he is authorized by the Owner so to act, and in such instances he shall, upon request, show the Contractor written authority. He has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the Contract.

As the Architect is, in the first instance, the interpreter of the conditions of the Contract and the judge of its performance, he shall side neither with the Owner nor with the Contractor, but shall use his powers under the contract to enforce its faithful performance by both.

In case of the termination of the employment of the Architect, the Owner shall appoint a capable and reputable Architect, whose status under the contract shall be that of the former Architect.

Art. 10. The Architect's Decisions.—The Architect shall, within a reasonable time, make decisions on all claims of the Owner or Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents.

The Architect's decisions, in matters relating to artistic effect, shall be final, if within the terms of the Contract Documents.

Except as above or as otherwise expressly provided in these General Conditions or in the specifications, all the Architect's decisions are subject to arbitration.

Art. 11. Foreman, Supervision.—The Contractor shall keep on his work, during its progress, a competent foreman and any necessary assistants, all satisfactory to the Architect. The foreman shall not be changed except with the consent of the Architect, unless the foreman proves to be unsatisfactory to the Contractor and ceases to be in his employ. The foreman shall represent the Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor. Important directions shall be confirmed in writing to the Contractor. Other directions shall be so confirmed on written request in each case.

The Contractor shall give efficient supervision to the work, using his best skill and attention. He shall carefully study and compare all drawings, specifications and other instructions and shall at once report to the Architect any error, inconsistency or omission which he may discover.

Art. 12. Materials, Appliances, Employees.—Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light and power necessary for the execution of the work.

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality. The Contractor shall, if

required, furnish satisfactory evidence as to the kind and quality of materials.

The Contractor shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

Art. 13. Inspection of Work.—The Owner, the Architect and their representatives shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection.

If the specifications, the Architect's instructions, laws, ordinances or any public authority require any work to be specially tested or approved, the Contractor shall give the Architect timely notice of its readiness for inspection, and if the inspection is by another authority than the Architect, of the date fixed for such inspection. Inspections by the Architect shall be promptly made. If any such work should be covered up without approval or consent of the Architect, it must, if required by the Architect, be uncovered for examination at the Contractor's expense.

Re-examination of questioned work may be ordered by the Architect. If such work be found in accordance with the contract, the Owner shall pay the cost of re-examination and replacement. If such work be found not in accordance with the contract, through the fault of the Contractor, the Contractor shall pay such cost, unless he shall show that the defect in the work was caused by another contractor, and in that event the Owner shall pay such cost.

Art. 14. Correction of Work Before Final Payment.—The Contractor shall promptly remove from the premises all materials condemned by the Architect as failing to conform to the Contract, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

If the Contractor does not remove such condemned work and materials within a reasonable time, fixed by written notice, the Owner may remove them and may store the material at the expense of the Contractor. If the Contractor does not pay the expense of such removal within five days thereafter, the Owner may, upon ten days written notice, sell such materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

Art. 15. Deductions for Uncorrected Work.—If the Architect and Owner deem it inexpedient to correct work injured or done not in accordance with the Contract, the difference in value together with a fair allowance for damage shall be deducted.

Art. 16. Correction of Work After Final Payment.—Neither the final certificate nor payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility for faulty materials or workmanship and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of two years from the time of installation. The Owner shall give notice of observed defects with reasonable promptness. All questions arising under this Article shall be decided under Articles 10 and 45.

Art. 17. Protection of Work and Property.—The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury arising in connection with this Contract. He shall make good any such damage or injury, except

such as may be directly due to errors in the Contract Documents. He shall adequately protect adjacent property as provided by law and the Contract Documents.

Art. 18. Emergencies.—In an emergency affecting the safety of life or of the structure or of adjoining property, not considered by the Contractor as within the provisions of Article 17, then the Contractor, without special instruction or authorization from the Architect or Owner, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury and he shall so act, without appeal, if so instructed or authorized. Any compensation claimed to be due to him therefor shall be determined under Articles 10 and 45 regardless of the limitations in Article 25 and in the second paragraph of Article 24.

Art. 19. Contractor's Liability Insurance.—The Contractor shall maintain such insurance as will protect him from claims under workmen's compensation acts and from any other claims for damages for personal injury, including death, which may arise from operations under this contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. Certificates of such insurance shall be filed with the Owner, if he so require, and shall be subject to his approval for adequacy of protection.

Art. 20. Owner's Liability Insurance.—The Owner shall maintain such insurance as will protect him from his contingent liability for damages for personal injury, including death, which may arise from operations under this contract.

Art. 21. Fire Insurance.—The Owner shall effect and maintain fire insurance upon the entire structure on which the work of this contract is to be done and upon all materials, in or adjacent thereto and intended for use thereon, to at least eighty per cent of the insurable value thereof. The loss, if any, is to be made adjustable with and payable to the Owner as Trustee for whom it may concern.

All policies shall be open to inspection by the Contractor. If the Owner fails to show them on request or if he fails to effect or maintain insurance as above, the Contractor may insure his own interest and charge the cost thereof to the Owner. If the Contractor is damaged by failure of the Owner to maintain such insurance, he may recover under Art. 39.

If required in writing by any party in interest, the Owner as Trustee shall, upon the occurrence of loss, give bond for the proper performance of his duties. He shall deposit any money received from insurance in an account separate from all his other funds and he shall distribute it in accordance with such agreement as the parties in interest may reach, or under an award of arbitrators appointed, one by the Owner, another by joint action of the other parties in interest, all other procedure being in accordance with Art. 45. If after loss no special agreement is made, replacement of injured work shall be ordered under Art. 24.

The Trustee shall have power to adjust and settle any loss with the insurers unless one of the contractors interested shall object in writing within three working days of the occurrence of loss and thereupon arbitrators shall be chosen as above. The Trustee shall in that case make settlement with the insurers in accordance with the directions of such arbitrators, who shall also, if distribution by arbitration is required, direct such distribution.

Art. 22. Guaranty Bonds.—The Owner shall have the right to require the Contractor to furnish bond covering the faithful performance of the contract and the payment of all obligations arising thereunder, in such

form as the Owner may prescribe and with such sureties as he may approve. If such bond is required by instructions given previous to the receipt of bids, the premium shall be paid by the Contractor; if subsequent thereto, it shall be paid by the Owner.

Art. 23. Cash Allowances.—The Contractor shall include in the contract sum all allowances named in the Contract Documents and shall cause the work so covered to be done by such contractors and for such sums as the Architect may direct, the contract sum being adjusted in conformity therewith. The Contractor declares that the contract sum includes such sums for expenses and profit on account of cash allowances as he deems proper. No demand for expenses or profit other than those included in the contract sum shall be allowed. The Contractor shall not be required to employ for any such work persons against whom he has a reasonable objection.

Art. 24. Changes in the Work.—The Owner, without invalidating the contract, may make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly. All such work shall be executed under the conditions of the original contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

Except as provided in Articles 3, 9 and 18, no change shall be made unless in pursuance of a written order from the Owner signed or countersigned by the Architect, or a written order from the Architect stating that the Owner has authorized the change, and no claim for an addition to the contract sum shall be valid unless so ordered.

The value of any such change shall be determined in one or more of the following ways:

- (a) By estimate and acceptance in a lump sum.
- (b) By unit prices named in the contract or subsequently agreed upon.
- (c) By cost and percentage or by cost and a fixed fee.
- (d) If none of the above methods is agreed upon, the Contractor, provided he receives an order as above, shall proceed with the work, no appeal to arbitration being allowed from such order to proceed.

In cases (c) and (d), the Contractor shall keep and present in such form as the Architect may direct, a correct account of the net cost of labor and materials, together with vouchers. In any case, the Architect shall certify to the amount, including a reasonable profit, due to the Contractor. Pending final determination of value, payments on account of changes shall be made on the Architect's certificate.

Art. 25. Claims for Extras.—If the Contractor claims that any instructions, by drawings or otherwise, involve extra cost under this contract, he shall give the Architect written notice thereof before proceeding to execute the work and, in any event, within two weeks of receiving such instructions, and the procedure shall then be as provided in Art. 24. No such claim shall be valid unless so made.

Art. 26. Applications for Payments.—The Contractor shall submit to the Architect an application for each payment and, if required, receipts or other vouchers showing his payments for materials and labor, including payments to subcontractors as required by Article 44.

If payments are made on valuation of work done, such application shall be submitted at least ten days before each payment falls due, and, if required, the Contractor shall, before the first application, submit to the Architect a schedule of values of the various parts of the work, including quantities, aggregating the total sum of the contract, divided so as to facilitate payments to subcontractors in accordance with Article 44 (e),

made out in such form and, if required, supported by such evidence as to its correctness, as the Architect may direct. This schedule, when approved by the Architect, shall be used as a basis for certificates of payment, unless it be found to be in error. In applying for payments, the Contractor shall submit a statement based upon this schedule and, if required, itemized in such form and supported by such evidence as the Architect may direct, showing his right to the payment claimed.

Art. 27. Certificates and Payments.—If the Contractor has made application as above, the Architect shall, not later than the date when each payment falls due, issue to the Contractor a certificate for such amount as he decides to be properly due.

No certificate issued nor payment made to the Contractor, nor partial or entire use or occupancy of the work by the Owner shall be an acceptance of any work or materials not in accordance with this contract. The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner, otherwise than under Articles 16 and 29 of these conditions or under requirement of the specifications, and of all claims by the Contractor, except those previously made and still unsettled.

Should the Owner fail to pay the sum named in any certificate of the Architect or in any award by arbitration, upon demand when due, the Contractor shall receive, in addition to the sum named in the certificate, interest thereon at the legal rate in force at the place of building.

Art. 28. Payments Withheld.—The Architect may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate for payment to such extent as may be necessary to protect the Owner from loss on account of:

- (a) Defective work not remedied.
- (b) Claims filed or reasonable evidence indicating probable filing of claims.
- (c) Failure of the Contractor to make payments properly to subcontractors or for material or labor.
- (d) A reasonable doubt that the contract can be completed for the balance then unpaid.
- (e) Damage to another contractor under Article 40.

When all the above grounds are removed certificates shall at once be issued for amounts withheld because of them.

Art. 29. Liens.—Neither the final payment nor any part of the the retained percentage shall become due until the Contractor, if required, shall deliver to the Owner a complete release of all liens arising out of this contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as he has knowledge or information the releases and receipts include all the labor and material for which a lien could be filed; but the Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Owner, to indemnify him against any claim by lien or otherwise. If any lien or claim remain unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and a reasonable attorney's fee.

Art. 30. Permits and Regulations.—The Contractor shall obtain and pay for all permits and licenses, but not permanent easements, and shall give all notices, pay all fees and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the Architect in writing, and any necessary changes shall be adjusted under Article 24. If the Contractor performs

any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect, he shall bear all costs arising therefrom.

Art. 31. Royalties and Patents.—The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when the product of a particular manufacturer or manufacturers is specified, but if the Contractor has information that the article specified is an infringement of a patent he shall be responsible for such loss unless he promptly gives such information to the Architect or Owner.

Art. 32. Use of Premises.—The Contractor shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinances, permits or directions of the Architect and shall not unreasonably encumber the premises with his materials.

The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.

The Contractor shall enforce the Architect's instructions regarding signs, advertisements, fires and smoking.

Art. 33. Cleaning Up.—The Contractor shall at all times keep the premises free from accumulations of waste material or rubbish caused by his employees or work and at the completion of the work he shall remove all his rubbish from and about the building and all his tools, scaffolding and surplus materials and shall leave his work "broom clean" or its equivalent, unless more exactly specified. In case of dispute the Owner may remove the rubbish and charge the cost to the several contractors as the Architect shall determine to be just.

Art. 34. Cutting, Patching and Digging.—The Contractor shall do all cutting, fitting or patching of his work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors shown upon, or reasonably implied by, the Drawings and Specifications for the completed structure and he shall make good after them, as the Architect may direct.

Any cost caused by defective or ill-timed work shall be borne by the party responsible therefor.

The Contractor shall not endanger any work by cutting, digging or otherwise and shall not cut or alter the work of any other contractor save with the consent of the Architect.

Art. 35. Delays.—If the Contractor be delayed in the completion of the work by any act or neglect of the Owner or the Architect, or of any employee of either, or by any other contractor employed by the Owner, or by changes ordered in the work, or by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Architect pending arbitration, or by any cause which the Architect shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Architect may decide.

No such extension shall be made for delay occurring more than seven days before claim therefor is made in writing to the Architect. In the case of a continuing cause of delay, only one claim is necessary.

If no schedule is made under Art. 3, no claim for delay shall be allowed on account of failure to furnish drawings until two weeks after demand for such drawings and not then unless such claim be reasonable.

This article does not exclude the recovery of damages for delay by either party under article 39 or other provisions in the contract documents.

Art. 36. Owner's Right to Do Work.—If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this contract, the Owner, after three days' written notice to the Contractor, may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor; provided, however, that the Architect shall approve both such action and the amount charged to the Contractor.

Art. 37. Owner's Right to Terminate Contract.—If the Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should, except in cases recited in Article 35, persistently or repeatedly refuse or fail to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the Architect, or otherwise be guilty of a substantial violation of any provision of the contract, then the Owner, upon the certificate of the Architect that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Contractor seven days' written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expense of finishing the work, including compensation to the Architect for his additional services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The expense incurred by the Owner as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Architect.

Art. 38. Contractor's Right to Stop Work or Terminate Contract.—If the work should be stopped under an order of any court, or other public authority, for a period of three months, through no act or fault of the Contractor or of any one employed by him, or if the Owner should fail to pay to the Contractor, within seven days of its maturity and presentation, any sum certified by the Architect or awarded by arbitrators, then the Contractor may, upon three days' written notice to the Owner and the Architect, stop work or terminate this contract and recover from the Owner payment for all work executed and any loss sustained upon any plant or material and reasonable profit and damages.

Art. 39. Damages.—If either party to this contract should suffer damage in any manner because of any wrongful act or neglect of the other party or of any one employed by him, then he shall be reimbursed by the other party for such damage.

Claims under this clause shall be made in writing to the party liable within a reasonable time of the first observance of such damage and not later than the time of final payment, except in case of claims under Article 16, and shall be adjusted by agreement or arbitration.

Art. 40. Mutual Responsibility of Contractors.—Should the Contractor cause damage to any other contractor on the work, the Contractor agrees, upon due notice, to settle with such contractor by agreement or arbitration, if he will so settle. If such other contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the

Contractor, who shall defend such proceedings at the Owner's expense and, if any judgment against the Owner arise therefrom, the Contractor shall pay or satisfy it and pay all costs incurred by the Owner.

Art. 41. Separate Contracts.—The Owner reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs.

If any part of the Contractor's work depends for proper execution or results upon the work of any other contractor, the Contractor shall inspect and promptly report to the Architect any defects in such work that render it unsuitable for such proper execution and results. His failure so to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other contractor's work after the execution of his work.

To insure the proper execution of his subsequent work the Contractor shall measure work already in place and shall at once report to the Architect any discrepancy between the executed work and the drawings.

Art. 42. Assignment.—Neither party to the Contract shall assign the contract without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner.

Art. 43. Subcontracts.—The Contractor shall, as soon as practicable after the signature of the contract, notify the Architect in writing of the names of subcontractors proposed for the principal parts of the work and for such others as the Architect may direct and shall not employ any that the Architect may within a reasonable time object to as incompetent or unfit.

If the Contractor has submitted before signing the contract a list of subcontractors and the change of any name on such list is required or permitted after signature of agreement, the contract price shall be increased or diminished by the difference between the two bids.

The Architect shall, on request, furnish to any subcontractor, wherever practicable, evidence of the amounts certified to on his account.

The Contractor agrees that he is as fully responsible to the Owner for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the contract documents shall create any contractual relation between any subcontractor and the Owner.

Art. 44. Relations of Contractor and Subcontractor.—The Contractor agrees to bind every subcontractor and every subcontractor agrees to be bound, by the terms of the General Conditions, Drawings and Specifications, as far as applicable to his work, including the following provisions of this Article, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Owner or Architect. This does not apply to minor subcontracts.

The Subcontractor agrees—

- (a) To be bound to the Contractor by the terms of the General Conditions, Drawings and Specifications and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the Owner.

- (b) To submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under Article 26 of the General Conditions.
- (c) To make all claims for extras, for extensions of time and for damages for delays or otherwise, to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon the Owner, except that the time for making claims for extra cost as under Article 25 of the General Conditions is one week.

The Contractor agrees—

- (d) To be bound to the Subcontractor by all the obligations that the Owner assumes to the Contractor under the General Conditions, Drawings and Specifications and by all the provisions thereof affording remedies and redress to the Contractor from the Owner.
- (e) To pay the Subcontractor, upon the issuance of certificates, if issued under the schedule of values described in Article 26 of the General Conditions, the amount allowed to the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's interest therein.
- (f) To pay the Subcontractor, upon the issuance of certificates, if issued otherwise than as in (e), so that at all times his total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him.
- (g) To pay the Subcontractor to such extent as may be provided by the Contract Documents or the subcontract, if either of these provides for earlier or larger payments than the above.
- (h) To pay the Subcontractor on demand for his work or materials as far as executed and fixed in place, less the retained percentage, at the time the certificate should issue, even though the Architect fails to issue it for any cause not the fault of the Subcontractor.
- (j) To pay the Subcontractor a just share of any fire insurance money received by him, the Contractor, under Article 21 of the General Conditions.
- (k) To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the subcontract.
- (l) That no claim for services rendered or materials furnished by the Contractor to the Subcontractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first ten days of the calendar month following that in which the claim originated.
- (m) To give the Subcontractor an opportunity to be present and to submit evidence in any arbitration involving his rights.
- (n) To name as arbitrator under Article 45 of the General Conditions the person nominated by the Subcontractor, if the sole cause of dispute is the work, materials, rights or responsibilities of the Subcontractor; or, if of the Subcontractor and any other subcontractor jointly, to name as such arbitrator the person upon whom they agree.

The Contractor and the Subcontractor agree that—

- (o) In the matter of arbitration, their rights and obligations and all procedure shall be analogous to those set forth in Article 45 of the General Conditions.

Nothing in this Article shall create any obligation on the part of the

Owner to pay to or to see to the payment of any sums to any Subcontractor.

Art. 45. Arbitration.—Subject to the provisions of Article 10, all questions in dispute under this contract shall be submitted to arbitration at the choice of either party to the dispute. The Contractor agrees to push the work vigorously during arbitration proceedings.

The demand for arbitration shall be filed in writing with the Architect, in the case of an appeal from his decision, within ten days of its receipt and in any other case within a reasonable time after cause thereof and in no case later than the time of final payment, except as to questions arising under Article 16. If the Architect fails to make a decision within a reasonable time, an appeal to arbitration may be taken as if his decision had been rendered against the party appealing.

No one shall be nominated or act as an arbitrator who is in any way financially interested in this contract or in the business affairs of either the Owner, Contractor or Architect.

The general procedure shall conform to the laws of the State in which the work is to be erected. Unless otherwise provided by such laws, the parties may agree upon one arbitrator; otherwise there shall be three, one named, in writing, by each party to this contract, to the other party and to the Architect, and the third chosen by these two arbitrators, or if they fail to select a third within ten days, then he shall be chosen by the presiding officer of the Bar Association nearest to the location of the work. Should the party demanding arbitration fail to name an arbitrator within ten days of his demand, his right to arbitration shall lapse. Should the other party fail to choose an arbitrator within said ten days, then such presiding officer shall appoint such arbitrator. Should either party refuse or neglect to supply the arbitrators with any papers or information demanded in writing, the arbitrators are empowered by both parties to proceed *ex parte*.

The arbitrators shall act with promptness. If there be one arbitrator his decision shall be binding; if three the decision of any two shall be binding. Such decision shall be a condition precedent to any right of legal action, and wherever permitted by law it may be filed in Court to carry it into effect.

The arbitrators, if they deem that the case demands it, are authorized to award to the party whose contention is sustained such sums as they shall deem proper for the time, expense and trouble incident to the appeal and, if the appeal was taken without reasonable cause, damages for delay. The arbitrators shall fix their own compensation, unless otherwise provided by agreement, and shall assess the costs and charges of the arbitration upon either or both parties.

The award of the arbitrators must be in writing and, if in writing, it shall not be open to objection on account of the form of the proceedings or the award, unless otherwise provided by the laws of the State in which the work is to be erected.

In the event of such laws providing on any matter covered by this article otherwise than as hereinbefore specified, the method of procedure throughout and the legal effect of the award shall be wholly in accordance with the said State laws, it being intended hereby to lay down a principle of action to be followed, leaving its local application to be adapted to the legal requirements of the place in which the work is to be erected.

THE STANDARD FORM OF BOND.

FOR USE IN CONNECTION WITH THE THIRD EDITION OF THE STANDARD
FORM OF AGREEMENT AND GENERAL CONDITIONS OF THE CONTRACT.

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HOUSE, WASHINGTON, D. C.

KNOW ALL MEN: That we
(Here insert the name and address or legal title of the Contractor.)

hereinafter called the Principal, and.....
(Here insert the name and address or legal title of one or more sureties.)

hereinafter called the Surety or Sureties, are held and firmly bound unto
(Here insert the name and address or legal title of the Owner.)

hereinafter called the Owner, in the sum of
..... (\$.....)

for the payment whereof the Principal and the Surety or Sureties bind
themselves, their heirs, executors, administrators, successors and assigns,
jointly and severally, firmly, by these presents.

Whereas, the Principal has, by means of a written Agreement, dated
..... entered into a contract with the Owner for
.....

a copy of which Agreement is by reference made a part hereof;

Now, Therefore, the Condition of this Obligation is such that if the
Principal shall faithfully perform the Contract on his part, and satisfy all
claims and demands, incurred for the same, and shall fully indemnify and
save harmless the Owner from all cost and damage which he may suffer
by reason of failure so to do, and shall fully reimburse and repay the
Owner all outlay and expense which the Owner may incur in making good
any such default, and shall pay all persons who have contracts directly
with the Principal for labor or materials, then this obligation shall be
null and void; otherwise it shall remain in full force and effect.

Provided, however, that no suit, action or proceeding by reason of
any default whatever shall be brought on this Bond after.....
months from the day on which the final payment under the Contract falls
due.

And Provided, that any alterations which may be made in the terms
of the Contract, or in the work to be done under it, or the giving by the
Owner of any extension of time for the performance of the Contract, or
any other forbearance on the part of either the Owner or the Principal to
the other shall not in any way release the Principal and the Surety or
Sureties, or either or any of them, their heirs, executors, administrators,
successors or assigns from their liability hereunder, notice to the Surety
or Sureties of any such alteration, extension or forbearance being hereby
waived.

INSTITUTE FORMS AND DOCUMENTS 211

Signed and Sealed this.....day of.....19...

In Presence of

..... } as to(SEAL)
..... }

..... } as to(SEAL)
..... }

..... } as to(SEAL)
..... }

..... } as to(SEAL)
..... }

THE STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR
AND SUBCONTRACTOR.

FOR USE IN CONNECTION WITH THE THIRD EDITION OF THE STANDARD
FORM OF AGREEMENT AND GENERAL CONDITIONS OF THE CONTRACT.

COPYRIGHT 1915, BY THE AMERICAN INSTITUTE OF ARCHITECTS, THE OCTAGON
HOUSE, WASHINGTON, D. C.

THIS AGREEMENT, made this.....day of.....19....
by and between hereinafter called
the Subcontractor and
hereinafter called the Contractor.

WITNESSETH, That the Subcontractor and Contractor for the consid-
erations hereinafter named agree as follows:

Section 1. The Subcontractor agrees to furnish all material and per-
form all work as described in Section 2 hereof for (Here name the kind of building.)
for (Here insert the name of the Owner.)

hereinafter called the Owner, at (Here insert the location of the work.)
in accordance with the General Conditions of the Contract between the
Owner and the Contractor, and in accordance with the Drawings and the
Specifications prepared by
hereinafter called the Architect, all of which General Conditions, Drawings
and Specifications signed by the parties thereto or identified by the
Architect, form a part of a Contract between the Contractor and the
Owner dated, 19...., and hereby be-
come a part of this Contract.

Section 2. The Subcontractor and the Contractor agree that the
materials to be furnished and work to be done by the Subcontractor are
(Here insert a precise description of the work, preferably by reference to the numbers of
the Drawings and the pages of the Specifications.)

Section 3. The Subcontractor agrees to complete the several portions
and the whole of the work herein sublet by the time or times following:
(Here insert the date or dates and if there be liquidated damages state them.)

Section 4. The Contractor agrees to pay the Subcontractor for the
performance of his work the sum of (\$.....)
in current funds, subject to additions and deductions for changes as may
be agreed upon, and to make payments on account thereof in accordance
with Section 5 hereof.

Section 5. The Contractor and Subcontractor agree to be bound by
the terms of the General Conditions, Drawings and Specifications as far as
applicable to this subcontract, and also by the following provisions:

The Subcontractor agrees:

(a) To be bound to the Contractor by the terms of the General Condi-
tions, Drawings and Specifications, and to assume toward him all the
obligations and responsibilities that he, by those documents, assumes
toward the Owner.

(b) To submit to the Contractor applications for payment in such reason-
able time as to enable the Contractor to apply for payment under his
contract.

(c) To make all claims for extras, for extensions of time and for

damages for delays or otherwise, to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon the Owner, except that the time for making claims for extra cost is one week.

The Contractor agrees:

(d) To be bound to the Subcontractor by all the obligations that the Owner assumes to the Contractor under the General Conditions, Drawings and Specifications, and by all the provisions thereof affording remedies and redress to the Contractor from the Owner.

(e) To pay the Subcontractor, upon the issuance of certificates, if issued under a schedule of values, the amount allowed to the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's interest therein.

(f) To pay the Subcontractor, upon the issuance of certificates, if issued otherwise than as in (e), so that at all times his total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him.

(g) To pay the Subcontractor to such extent as may be provided by the Contract Documents or the Subcontract, if either of these provides for earlier or larger payments than the above.

(h) To pay the Subcontractor on demand for his work or materials as far as executed and fixed in place, less the retained percentage, at the time the certificate should issue, even though the Architect fails to issue it for any cause not the fault of the Subcontractor.

(j) To pay the Subcontractor a just share of any fire insurance money received by him, the Contractor, under the General Conditions.

(k) To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the Subcontract.

(l) That no claim for services rendered or materials furnished by the Contractor to the Subcontractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first ten days of the calendar month following that in which the claim originated.

(m) To give the Subcontractor an opportunity to be present and to submit evidence in any arbitration involving his rights.

(n) To name as arbitrator under the General Conditions, the person nominated by the Subcontractor if the sole cause of dispute is the work, materials, rights or responsibilities of the Subcontractor; or, if of the Subcontractor and any other Subcontractor jointly, to name as such arbitrator the person upon whom they agree.

The Contractor and the Subcontractor agree that:

(o) In the matter of arbitration, their rights and obligations and all procedure shall be analogous to those set forth in the General Conditions.

Nothing herein shall create any obligation on the part of the Owner to pay or to see to the payment of any sums to any Subcontractor.

Section 6.

.....

Finally.—The Subcontractor and Contractor, for themselves, their heirs, successors, executors, administrators and assigns, do hereby agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF they have hereunto set their hands the day
and date first above written.

In Presence of

.....

.....

Subcontractor.

.....

.....

Contractor.

STANDARD FORM OF ACCEPTANCE OF SUBCONTRACTOR'S PROPOSAL.

FOR USE IN CONNECTION WITH THE THIRD EDITION OF THE STANDARD
FORM OF AGREEMENT AND GENERAL CONDITIONS OF THE CONTRACT.

COPYRIGHT 1915, BY THE AMERICAN INSTITUTE OF ARCHITECTS, THE OCTAGON
HOUSE, WASHINGTON, D. C.

DEAR SIR: Having entered into a contract with
(Here insert the name and address or corporate title of the Owner.)

for the erection of
(Here insert the kind of work and the place at which it is to be erected.)

in accordance with the plans and specifications prepared by
(Here insert the name and address of the Architect.)

and in accordance with the General Conditions of the Contract prefixed to
the specifications, the undersigned hereby accepts your proposal of.....
(Here insert date.)

to provide all the materials and do all the work of
(Here insert the kind of work to be done, as plumbing, roofing, etc., accurately describing
by number, page, etc., the drawings and specifications governing such work.)

The Undersigned agrees to pay you in current funds for the faithful
performance of the subcontract established by this acceptance of your
proposal the sum of (\$.....)

Our relations in respect of this subcontract are to be governed by the
plans and specifications named above, by the General Conditions of the
Contract as far as applicable to the work thus sublet and especially by
Article 44 of those conditions printed on the reverse hereof.

Very truly yours,

Article 44 of the General Conditions of the Contract.

Relations of Contractor and Subcontractor.—The Contractor agrees to
bind every Subcontractor and every Subcontractor agrees to be bound, by
the terms of the General Conditions, Drawings and Specifications, as far as
applicable to his work, including the following provisions of this Article,
unless specifically noted to the contrary in a subcontract approved in
writing as adequate by the Owner or Architect. This does not apply to
minor subcontracts.

The Subcontractor agrees:

(a) To be bound to the Contractor by the terms of the General Condi-
tions, Drawings and Specifications, and to assume toward him all the
obligations and responsibilities that he, by those documents, assumes toward
the Owner.

(b) To submit to the Contractor applications for payment in such rea-
sonable time as to enable the Contractor to apply for payment under
Article 26 of the General Conditions.

(c) To make all claims for extras, for extensions of time and for damages

for delays or otherwise, to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon the Owner, except that the time for making claims for extra cost as under Article 25 of the General Conditions, is one week.

The Contractor agrees:

(*d*) To be bound to the Subcontractor by all the obligations that the Owner assumes to the Contractor under the General Conditions, Drawings and Specifications, and by all the provisions thereof affording remedies and redress to the contractor from the Owner.

(*e*) To pay the Subcontractor, upon the issuance of certificates, if issued under the schedule of values described in Article 26 of the General Conditions, the amount allowed to the Contractor on account of the Subcontractor's work to the extent of the Subcontractor's interest therein.

(*f*) To pay the Subcontractor, upon the issuance of certificates, if issued otherwise than as in (*e*), so that at all times his total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him.

(*g*) To pay the Subcontractor to such extent as may be provided by the Contract Documents or the subcontract, if either of these provides for earlier or larger payments than the above.

(*h*) To pay the Subcontractor on demand for his work or materials as far as executed and fixed in place, less the retained percentage, at the time the certificate should issue, even though the Architect fails to issue it for any cause not the fault of the Subcontractor.

(*j*) To pay the Subcontractor a just share of any fire insurance money received by him, the Contractor, under Article 21 of the General Conditions.

(*k*) To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the subcontract.

(*l*) That no claim for services rendered or materials furnished by the Contractor to the Subcontractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first ten days of the calendar month following that in which the claim originated.

(*m*) To give the Subcontractor an opportunity to be present and to submit evidence in any arbitration involving his rights.

(*n*) To name as arbitrator under Article 45 of the General Conditions, the person nominated by the Subcontractor if the sole cause of dispute is the work, materials, rights or responsibilities of the Subcontractor; or, if of the Subcontractor and any other subcontractor jointly, to name as such arbitrator the person upon whom they agree.

The Contractor and the Subcontractor agree that—

(*o*) In the matter of arbitration, their rights and obligations and all procedure shall be analogous to those set forth in Article 45 of the General Conditions.

Nothing in this Article shall create any obligation on the part of the Owner to pay to or to see to the payment of any sums to any subcontractor.

The Subcontractor entering into this agreement should be sure that not merely the above Article 44, but the full text of the General Conditions of the Contract as signed by the Owner and Contractor is known to him, since such full text, though not herein repeated, is binding on him.

NOTES ON THE STANDARD DOCUMENTS.

The Construction of the Documents.

An Agreement, Drawings and Specifications are the necessary parts of a building contract. Many conditions of a general character may be placed at will in the Agreement or in the Specifications. It is, however, wise to assemble them in a single document and, since they have as much bearing on the Drawings as on the Specifications, and even more on the business relations of the contracting parties, they are properly called the "General Conditions of the Contract." As the Agreement, General Conditions, Drawings and Specifications are the constituent elements of the contract and are acknowledged as such in the Agreement, they are correctly termed the Contract Documents. Statements made in any one of them are just as binding as if made in the Agreement.

The Institute's forms, although intended for use in actual practice, should also be regarded as a code of reference representing the judgment of the Institute as to what constitutes good practice and as such they may be drawn upon by architects improving their own forms. Although the forms are suited for use in connection with a single or general contract, they are equally applicable to an operation conducted under separate contracts.

Notes on the Agreement.

As the laws relative to the following matters vary in the several States, and as the statements made below are true only in a broad way, the provisions of the laws of the state in which the building is to be erected should be ascertained from counsel, and the details of the contract documents should be arranged in conformity therewith.

Date of the Agreement.

Agreements executed on Sunday are generally void by statute.

Payments for materials delivered but not incorporated in the work.

On page 2 the definite system of payment which was printed on the Cover of the second edition, is now printed in the body of the agreement and a blank line is left to permit the easy insertion, when desired, of a clause covering payments for materials delivered but not incorporated in the work.

Names of the Contracting Parties.

Ascertain and use the exact name or legal title of the parties. In the case of an individual or a firm, the address of the place of business should follow the name.

If the best practice is to be observed, the name of each partner as well as that of the firm should be inserted at the place where the names of the contracting parties first appear in the Agreement. Thus, "John Brown, Richard Jones and William Robinson, trading as John Brown & Co." In this way the names of all the individuals who are to be made severally as well as jointly liable for the performance of the contract are indicated.

In the case of a corporation, use the exact title followed by a statement as to the place of incorporation, *e. g.*, "Palmer Construction Co., a corporation under the laws of the State of Delaware." In the case of a voluntary association (unless some state statute authorizes the association as such to enter into contracts in its associate name) insert the names of the officers and some responsible members so that all become personally bound by their signatures.

Signatures of Contracting Parties.

See that the signatures agree exactly with the names of the parties as first written in the Agreement. In the case of a firm, the signature of the firm name by one of the partners, in nearly all cases, binds the firm and each of its members. Obviously, it does not bind special partners except to the extent of their interest. It does not bind the partners in case the contract be for something not within the scope of the firm's business.

On account of the trouble of securing the signatures of the various partners, it is usual to accept the firm name signed by one of them, and in that case the signature of a partnership should be the firm name, by ———, the name of the general partner signing, but again, if the most rigorous practice is to be followed, the signature will consist of the firm name and of that of each of the partners.

The name of a corporation should be followed by the signature of the officer duly authorized to execute a contract, *e. g.*, "Palmer Construction Co. by Peter Palmer, President." The seal of the corporation must be attached or impressed and attested by the proper officer, *e. g.*, "Attest, Walter Palmer, Secretary."

In the case of a voluntary association the signatures of its officers and of a sufficient number of responsible individual members to insure the carrying out of the financial obligation assumed by the contract should be secured.

Authority to Execute a Contract.

(a) By an individual. There is ordinarily no legal bar to the execution by an individual of a contract for the employment of an architect or for the execution of work upon a building.

(b) By a business corporation. It is important to know—

1. That the corporation has the right to enter into the proposed contract.
2. That it has exercised that right by legal action.
3. That the officer executing the contract has been duly authorized so to act by the corporation.

It is common practice to assume that the Agreement, if signed by the president, sealed with the corporate seal and attested by the secretary, binds the corporation. Unless the signer's authority to sign contracts for the corporation is a matter of common knowledge, however, there should be attached to the Agreement a certificate showing that general power to sign is fully vested in the one signing or else there should be attached a special certificate such as the following:

At a meeting of the Board of Directors of the.....duly notified and held in.....on.....19..., a quorum being present, it was

VOTED: That.....the.....be and he is hereby authorized and directed in the name and on behalf of this corporation, and under its corporate seal, to execute and deliver a contract with.....for a.....at.....for the sum of \$....., said contract to be in such form and subject to such conditions as said.....shall see fit. And said.....is hereby further authorized and directed in the name and on behalf of this corporation and under its corporate seal, to execute and deliver to said Owner any bond or bonds he may see fit, to secure the performance of said contract by this corporation.

A True Copy.

Attest.....Secretary

(c) By any authority assuming to expend public moneys. The validity of an agreement between such bodies and an architect for his services is so charged with danger that no architect should enter into such an agreement except under advice of competent counsel.

Witnesses.

Witnesses at signing are not necessary. If there are witnesses there may be embarrassment in producing them in case of a contest, whereas, if there are none the signatures may be proved by any competent evidence. Witnesses are of use only when one of the parties claims that what purports to be his signature is a forgery.

Seals.

The attachment of the seal is a necessary part of the legal execution of a contract by a corporation.

The use of a seal or the word "seal" with the name of an individual or firm can do no harm, but since the only significance of a seal as used in ordinary contracts is to imply a consideration, and since all of the Institute's forms of agreement recite considerations, the use of a seal, except in the case of a corporation, is quite unnecessary. A bond, however, by its very nature must be under seal.

Notes on the General Conditions of the Contract.

In some cases the Articles as printed do not include all necessary General Conditions of the Contract. The Architect will then add such others as he deems wise.

Many architects include in their General Conditions one or more of the subjects named below. Most of these are better placed in the specifications for the various trades; and others, though suited for inclusion in the General Conditions, are not always needed. Among these subjects are:

- Bracing building during construction,
- Charges for extra copies of drawings,
- Chases,
- Checking by surveyor and his certificate,
- Contractor to keep the work in repair,
- Contractor to lay out the work, giving lines and levels,
- Contractor to work overtime if required,
- Fences,
- Heating during construction,
- Insurance against lightning, wind storms, hail and earthquake,
- Keeping building and cellar free from water,
- Ladders,
- Lanterns,
- Offices and their furniture,
- Permission to use articles or methods other than those specified,
- Photographs,
- Protection and care of trees and shrubs,
- Protective coverings in general,
- Sanitary convenience,
- Scaffolding,
- Sheds,
- Sidewalks,
- Special cleaning other than "broom clean," as in Article 33,
- Stoppage of work in freezing weather,
- Telephone,
- Temporary enclosure from weather,

Temporary stairways,
 Temporary wiring and electric lights,
 Vault permits,
 Watchmen.

For further information of use in connection with the General Conditions, refer to the "Handbook of Architectural Practice," published by the American Institute of Architects.

Notes on the Bond of Suretyship.

The bond of Suretyship is drawn for use with either corporate or individual sureties. If a bond is to be given, this form, without additions or omissions, should be insisted upon to insure a full measure of protection. Proper certification that those signing the bond have authority so to sign should accompany the bond.

Notes on the Invitation to Bid, Instructions to Bidders and Form of Proposal.

The Institute formerly issued the above named forms which contain much of value. Experience, however, showed that they had generally to be adapted to specific cases. They are, therefore, reproduced here so that Architects may draw from them whatever they deem useful.

Form of Invitation to Submit a Proposal.

DEAR SIR: You are invited to submit a proposal for.....
 Drawings, Specifications and other information may be procured from this office on and after..... All documents must be returned to this office not later than.....

To be entitled to consideration the proposal must be made upon the form provided by the Architect, which must be fully completed in accordance with the accompanying "Instructions to Bidders" and must be delivered to this office not later than.....

Very truly yours,

.....

Form of Instructions to Bidders.

Proposals, to be entitled to consideration, must be made in accordance with the following instructions:

Proposals shall be made upon the form provided therefor, and all blank spaces in the form shall be fully filled; numbers shall be stated both in writing and in figures; the signature shall be in long hand; and the completed form shall be without interlineation, alteration or erasure.

Proposals shall not contain any recapitulation of the work to be done. No oral, telegraphic or telephonic proposals or modifications will be considered.

Proposals shall be addressed to the Owner, in care of the Architect, and shall be delivered to the Architect enclosed in an opaque sealed envelope addressed to him, marked "Proposal" and bearing the title of the work and the name of the Bidder.

Should a bidder find discrepancies in, or omissions from, the drawings or documents, or should he be in doubt as to their meaning, he should at once notify the Architect, who will send a written instruction to all bidders. Neither Owner nor Architect will be responsible for any oral instructions.

Before submitting a proposal, bidders should carefully examine the drawings and specifications, visit the site or work, fully inform themselves as to

all existing conditions and limitations and shall include in the Proposal a sum to cover the cost of all items included in the Contract.

The competency and responsibility of bidders and of their proposed sub-contractors will be considered in making the award. The Owner does not obligate himself to accept the lowest or any other bid.

Provision will be made in the Agreement for payments on account in the following words: (Insert the provision.)

Any Bulletins issued during the time of bidding are to be covered in the proposal and in closing a contract they will become a part thereof.

Form of Proposal.

(The Proposal should be dated and addressed to the Owner in care of the Architect.)

DEAR SIR: Having carefully examined the Instructions to Bidders, the General Conditions of the Contract and Specifications entitled.....

(Here insert the caption descriptive of the work as used therein.)

and the Drawings, similarly entitled, numbered..... as well as the premises and the conditions affecting the work, the Undersigned proposes to furnish all materials and labor called for by them for.....

(Here insert, in case all the work therein described is to be covered by one contract, "the entire work." In case of a partial contract insert name of the trade or trades to be covered and the numbers of the pages of the Specifications on which the work is described.)

in accordance with the said documents for the sum of..... Dollars (\$.....). If he be notified of the acceptance of this proposal within.....days of the time set for the opening of bids he agrees to execute a contract for the above work, for the above stated compensation in the form of the Standard Agreement of the American Institute of Architects.

Very truly yours,

.....

SUGGESTIONS TO ARCHITECTS USING THE ABOVE FORM OF PROPOSAL.

The above form includes only such statements as will probably be required in any Proposal. Additions will usually have to be made to it. Suggestions suited to certain conditions are offered in the following notes.

If the bidder is to name the time required for completing the work, insert such a clause as the following:

The undersigned agrees, if awarded the Contract, to complete it within days, Sundays and whole holidays not included.

If liquidated damages are to be required, insert the following:

And further agrees that, from the compensation otherwise to be paid, the Owner may retain the sum of.....dollars (\$.....) for each day thereafter, Sundays and holidays included, that the work remains uncompleted, which sum is agreed upon as the proper measure of liquidated damages which the Owner will sustain per diem by the failure of the undersigned to complete the work at the time stipulated, and this sum is not to be construed as in any sense a penalty.

If a bond is required, insert the following:

The undersigned agrees, if awarded the Contract, to execute and deliver to the Architect within.....days after the signing of the Contract, a satisfactory bond in the form issued by the American Institute of Architects (second edition reissued 1918) and in an amount equal to the contract sum, and further agrees that if such bond be not required, he will deduct from the proposal price the sum of.....dollars (\$.....).

If a certified check is required, the following clause should be inserted:

The undersigned further agrees that the certified check payable to Owner, accompanying this proposal, is left in escrow with the Architect; that its amount is the measure of liquidated damages which the Owner will sustain by the failure of the Undersigned to execute and deliver the above named Agreement and bond, and that if the Undersigned defaults in executing that Agreement within..... days of written notification of the award of the contract to him or in furnishing the Bond within.....days thereafter, then the check shall become the property of the Owner, but if this proposal is not accepted within.....days of the time set for the submission of bids, or if the Undersigned executes and delivers said Contract and Bond, the check shall be returned to him on receipt therefor.

If alternative proposals are required, they should be set forth, as for example,

Should.....be substituted for..... the Undersigned agrees to deduct (or will require the addition of)..... dollars (\$.....) from (or to) the proposed sum.

If unit prices are required as a part of the proposal, they should be set forth, as, for example:

The Undersigned agrees that work added shall be computed at the following prices, and that work omitted shall be computed at.....per cent less than these prices.

*Concrete foundations.....per cubic yard,
Rough brickwork.....per thousand,
Plastering.....per yard.*

If the names of subcontractors whom the Contractor proposes to employ are required as a part of the Proposal this requirement should be set forth, as, for example:

In case of obtaining the award the Undersigned will employ, subject to the Architect's approval, subcontractors in each of the several trades selected from the following list (one or more names must be inserted for each trade):

*Excavation
Stone Masonry
Brickwork
etc., etc.*

A FORM OF AGREEMENT BETWEEN CONTRACTOR AND OWNER.

ISSUED BY THE AMERICAN INSTITUTE OF ARCHITECTS FOR USE WHEN
THE COST OF THE WORK PLUS A FEE FORMS THE BASIS OF PAYMENT.

FIRST EDITION—COPYRIGHT 1920 BY THE AMERICAN INSTITUTE OF ARCHITECTS,
WASHINGTON, D. C.

THIS FORM IS TO BE USED ONLY WITH THE INSTITUTE'S STANDARD GENERAL
CONDITIONS OF THE CONTRACT, AND IT SHOULD NOT BE USED WITHOUT CAREFUL
STUDY OF ITS ACCOMPANYING "CIRCULAR OF INFORMATION."

THIS AGREEMENT made the.....day of
.....in the year nineteen hundred and
.....by and between.....
hereinafter called the Contractor, and.....
.....hereinafter called the Owner,
WITNESSETH, that whereas the Owner intends to erect.....

NOW, THEREFORE, the Contractor and the Owner, for the considera-
tions hereinafter named, agree as follows:

Article 1. The Work to be Done and the Documents Forming the Contract.

The Contractor agrees to provide all the labor and materials and to do all
things necessary for the proper construction and completion of the work
shown and described on Drawings bearing the title.....
and numbered..... and in Specifications bearing
the same title, the pages of which are numbered.....
The said Drawings and Specifications and the General Conditions of the
Contract consisting of Articles numbered one to.....
together with this Agreement, constitute the Contract; the Drawings,
Specifications and General Conditions being as fully a part thereof and
hereof as if hereto attached or herein repeated. If anything in the said
General Conditions is inconsistent with this Agreement, the Agreement shall
govern.

The said documents have been prepared by.....
therein and hereinafter called the Architect.

Article 2. Changes in the Work.

The Owner, through the Architect, may from time to time, by written
instructions or drawings issued to the Contractor, make changes in the
above-named Drawings and Specifications, issue additional instructions,
require additional work or direct the omission of work previously ordered,
and the provisions of this contract shall apply to all such changes, modifi-
cations and additions with the same effect as if they were embodied in
the original Drawings and Specifications. Since the cost of all such changes
is to merge in the final cost of the work, Articles 24 and 25 of the General
Conditions of the Contract are annulled, unless elsewhere especially made
applicable.

Article 3. The Contractor's Duties and Status.

The Contractor recognizes the relations of trust and confidence established
between him and the Owner by this Agreement. He covenants with the
Owner to furnish his best skill and judgment and to cooperate with the

Architect in forwarding the interests of the Owner. He agrees to furnish efficient business administration and superintendence and to use every effort to keep upon the work at all times an adequate supply of workmen and materials, and to secure its execution in the best and soundest way and in the most expeditious and economical manner consistent with the interests of the Owner.

Article 4. Fee for Services.

In consideration of the performance of the contract, the Owner agrees to pay the Contractor, in current funds, as compensation for his services hereunder.....
 (\$.....) which shall be paid as follows:.....

Article 5. Costs to be Reimbursed.

The Owner agrees to reimburse the Contractor in current funds all costs necessarily incurred for the proper prosecution of the work and paid directly by the Contractor, such costs to include the following items, and to be at rates not higher than the standard paid in the locality of the work except with prior consent of the Owner:

- (a) All labor directly on the Contractor's pay roll.
- (b) Salaries of Contractor's Employees stationed at the field office, in whatever capacity employed. Employees engaged, at shops or on the road, in expediting the production or transportation of material, shall be considered as stationed at the field office and their salaries paid for such part of their time as is employed on this work.
- (c) The proportion of transportation, traveling and hotel expenses of the Contractor or of his officers or employees incurred in discharge of duties connected with this work.
- (d) All expenses incurred for transportation to and from the work of the force required for its prosecution.
- (e) Permit fees, royalties, damages, for infringement of patents, and costs of defending suits therefor and for deposits lost for causes other than the Contractor's negligence.
- (f) Losses and expenses, not compensated by insurance or otherwise, sustained by the Contractor in connection with the work, provided they have resulted from causes other than the fault or neglect of the Contractor. Such losses shall include settlements made with the written consent and approval of the Owner. No such losses and expenses shall be included in the cost of the work for the purpose of determining the Contractor's fee, but if, after a loss from fire, flood or similar cause not due to the fault or neglect of the Contractor, he be put in charge of reconstruction, he shall be paid for his services a fee proportionate to that named in Article 4 hereof.
- (g) Minor expenses, such as telegrams, telephone service, expressage, and similar petty cash items.
- (h) Cost of hand tools, not owned by the workmen, canvas and tarpaulins, consumed in the prosecution of the work, and depreciation on such tools, canvas and tarpaulins used but not consumed and which shall remain the property of the Contractor.

Article 6. Costs Not to be Reimbursed.

Reimbursement of expenses to the Contractor shall not include any of the following:

(a) Salary of the Contractor, if an individual, or salary of any member of the Contractor, if a firm, or salary of any officer of the Contractor, if a corporation.

(b) Salary of any person employed, during the execution of the work, in the main office or in any regularly established branch office of the Contractor.

(c) Overhead or general expenses of any kind, except as these may be expressly included in Article 5.

(d) Interest on capital employed either in plant or in expenditures on the work, except as may be expressly included in Article 5.

Article 7. Costs to be Paid Direct by the Owner.

In addition to items of cost noted in Article 5 for which the Owner reimburses the Contractor, the Owner shall pay all costs as follows:

(a) Materials, supplies, equipment and transportation required for the proper execution of the work, which shall include all temporary structures and their maintenance; all such costs to be at rates not higher than the standard paid in the locality of the work except with prior consent of the Owner.

(b) The amounts of all separate contracts.

(c) Premiums on all bonds and insurance policies called for under Articles 19, 20, 21 and 22 of the General Conditions of the Contract.

(d) Rentals of all construction plant or parts thereof, whether rented from the Contractor or others, in accordance with rental agreements approved by the Architect. Transportation of said construction plant, costs of loading and unloading, cost of installation, dismantling and removal thereof and minor repairs and replacements during its use on the work,—all in accordance with the terms of the said rental agreements.

Article 8. Discounts, Rebates, Refunds.

All discounts, rebates and refunds, and all returns from sale of surplus materials, equipment, etc., shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.

Article 9. Contractor's Financial Responsibility.

Any cost due to the negligence of the Contractor or anyone directly employed by him, either for the making good of defective work, disposal of material wrongly supplied, making good of damage to property, or excess costs for material or labor, or otherwise, shall be borne by the Contractor, and the Owner may withhold money due the Contractor to cover any such cost already paid by him as part of the cost of the work.

This article supersedes the provisions of Articles 13, 14 and 16 of the General Conditions of the Contract so far as they are inconsistent herewith.

Article 10. Separate Contracts.

All portions of the work that the Contractor's organization has not been accustomed to perform or that the Owner may direct, shall be executed under separate contracts let by the Owner direct. In such cases either the Contractor shall ask for bids from contractors approved by the Architect and shall deliver such bids to him, or the Architect shall procure such bids himself, and in either case the Architect shall determine, with the advice of the Contractor and subject to the approval of the Owner, the award and amount of the accepted bid. The Owner shall contract for such work direct with such approved bidders in accordance with the terms of this

agreement and the General Conditions of the Contract, which Conditions shall, for the purposes of such contracts, stand as printed or written and not be subject to the modifications set forth herein.

The Contractor, being fully responsible for the general management of the building operation, shall have full directing authority over the execution of the separate contracts.

The separate Contractors shall not only cooperate with each other, as provided in Article 41 of the General Conditions of the Contract, but they shall conform to all directions of the contractor in regard to the progress of the work.

Article 11. Title to the Work.

The title of all work completed and in course of construction and of all materials on account of which any payment has been made, and materials to be paid for under Article 7, shall be in the Owner.

Article 12. Accounting, Inspection, Audit.

The Contractor shall check all material and labor entering into the work and shall keep such full and detailed accounts as may be necessary to proper financial management under this Agreement and the system shall be such as is satisfactory to the Architect or to an auditor appointed by the Owner. The Architect, the auditor and their timekeepers and clerks shall be afforded access to the work and to all the Contractor's books, records, correspondence, instructions, drawings, receipts, vouchers, memoranda, etc., relating to this contract, and the Contractor shall preserve all such records for a period of two years after the final payment hereunder.

Article 13. Applications for Payment.

The Contractor shall, between the first and seventh of each month, deliver to the Architect a statement, sworn to if required, showing in detail and as completely as possible all moneys paid out by him on account of the cost of the work during the previous month for which he is to be reimbursed under Article 5 hereof, with original pay rolls for labor, checked and approved by a person satisfactory to the Architect, and all receipted bills.

He shall at the same time submit to the Architect a complete statement of all moneys properly due for materials or on account of separate contracts, or on account of his fee, or otherwise, which are to be paid direct by the Owner under Article 7 hereof.

The provisions of this Article supersede those of Article 26 of the General Conditions of the Contract.

Article 14. Certificates of Payment.

The Architect shall check the Contractor's statements of moneys due, called for in Article 13, and shall promptly issue certificates to the Owner for all such as he approves, which certificates shall be payable on issuance.

The provisions of this Article supersede the first paragraph of Article 27 of the General Conditions of the Contract.

Article 15. Disbursements.

Should the Contractor neglect or refuse to pay, within five days after it falls due, any bill legitimately incurred by him hereunder (and for which he is to be reimbursed under Article 5) the Owner, after giving the Contractor twenty-four hours' written notice of his intention so to do, shall have the right to pay such bill directly, in which event such payment shall

not, for the purpose either of reimbursement or of calculating the Contractor's fee, be included in the cost of the work.

Article 16. Termination of Contract.

(The provisions of this Article supersede all of Article 37 of the General Conditions of the Contract except the first sentence.)

If the Owner should terminate the contract under the first sentence of Article 37 of the General Conditions of the Contract, he shall reimburse the Contractor for the balance of all payments made by him under Article 5, plus a fee computed upon the cost of the work to date at the rate of percentage named in Article 4 hereof, or if the Contractor's fee be stated as a fixed sum, the Owner shall pay the Contractor such an amount as will increase the payments on account of his fee to a sum which bears the same ratio to the said fixed sum as the cost of the work at the time of termination bears to a reasonable estimated cost of the work completed, and the Owner shall also pay to the Contractor fair compensation, either by purchase or rental, at the election of the Owner, for any equipment retained. In case of such termination of the contract the Owner shall further assume and become liable for all obligations, commitments and unliquidated claims that the Contractor may have theretofore, in good faith, undertaken or incurred in connection with said work and the Contractor shall, as a condition of receiving the payments mentioned in this Article, execute and deliver all such papers and take all such steps, including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in him the rights and benefits of the Contractor under such obligations or commitments.

The Contractor and the Owner for themselves, their successors, executors, administrators and assigns hereby agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF they have executed this agreement the day and year first above written.

A CIRCULAR OF INFORMATION RELATIVE TO THE COST-PLUS-FEE SYSTEM OF CONTRACTING FOR BUILDING CONSTRUCTION.

INTENDED TO ACCOMPANY "A FORM OF AGREEMENT BETWEEN CONTRACTOR AND OWNER ISSUED BY THE AMERICAN INSTITUTE OF ARCHITECTS FOR USE WHEN THE COST OF THE WORK PLUS A FEE FORMS THE BASIS OF PAYMENT."

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WASHINGTON, D. C.

THE SYSTEM IN GENERAL.

The system of reimbursing the Contractor his expenditures in executing the work and of paying him a fee for his services, commonly called the cost-plus-fee system, is now much in use. It is successfully applied to the conduct of work from the smallest repairs or alterations to the largest and most complicated buildings.

The cost-plus-fee method has, as compared with the system of letting a contract by competition and for a stipulated sum, advantages that will be made clear in the course of this circular. Its chief defect, from the Owner's point of view, is that, except under a modified form, later described as "Guarantee of Cost," it does not assure him that his work will be executed for a certain sum of money, an assurance which the method of stipulated sum, at least, seems to give.

Under the latter system, a number of competitors of necessarily varying responsibility and competency name the prices at which they will execute the work. The mere price rather than the ability and integrity of the Contractor becomes, in almost all cases, the basis of selection, frequently with an attendant train of evils that need not here be discussed. That method presupposes the completion, in advance of the bidding, of contract drawings and specifications.

Under the cost-plus-fee method, the Architect and Owner may, at any time, either before the making of drawings or specifications, during their progress or after their completion, choose that Contractor in whose integrity, experience, soundness of judgment and in the strength of whose organization they have the most confidence.

Since any method of building should be grounded upon the mutual confidence and cooperation of Architect, Owner and Contractor, the ability thus to choose a highly qualified Contractor who is *persona grata* to both Architect and Owner is among the great advantages of the cost-plus-fee system. Under it, the Contractor does not occupy a merely commercial position, but one of peculiar trust and responsibility. His chief interest, the rapid, sound and economic execution of the work, are the same as the Owner's.

A feature of the cost-plus-fee method, not generally recognized, is the possibility of its use in connection with competitive bidding, thus making it applicable to public as well as private work, as explained in Article 18 hereof.

His relation to the Owner becomes a professional one, quite parallel to that of the Architect. He becomes a construction manager for the Owner; and if his fee be made not a percentage of the cost, but a fixed sum, his mind is relieved of the usual financial considerations that are antagonistic

to the interests of the Owner and he assumes completely the position of a disinterested adviser.

In drafting a form of contract on the cost-plus-fee basis this new relationship should be carefully kept in mind, for many of those provisions that have been customary in the past are fundamentally at variance with the professional attitude on the part of the Contractor.

FORM OF AGREEMENT.

The provisions necessary to make cost-plus-fee contracts suitable to various classes of work and to bring them into harmony with the ideas of Owners, Contractors and Architects, are so many that no form of agreement likely to be generally useful without special preparation, can be drawn. The "Form of Agreement between Contractor and Owner issued by the American Institute of Architects for Use when the Cost of the Work Plus a Fee Forms the Basis of Payment" to which this circular refers, may, in some cases, be found suited for use as it stands, but generally its usefulness will lie in facilitating the drafting of a special agreement.

Turning to the Form of Agreement, we observe that it is to be used in conjunction with the Institute's General Conditions of the Contract, a document prepared primarily for use when a stipulated sum forms the basis of payment, but which as modified by the terms of the agreement now under consideration, becomes applicable to the cost-plus-fee form of contract.

While it would not be difficult to draw up a set of General Conditions especially suited to the cost-plus-fee method, and while such a procedure would make the agreement, itself, simpler and briefer, there are several reasons why the standard form of General Conditions is used.

First.—Many contracts, which begin with the idea of being let at a stipulated sum, are ultimately put on a cost-plus-fee basis, and, in such a case, it would be difficult to remove the General Conditions from all copies of the contract documents and substitute a new set.

Second.—Many contracts that are let on a cost-plus-fee basis contain a "guarantee of cost," in which case, as will be noted in this circular under that heading, it may be necessary to revert, in respect to orders for extras, to the General Conditions of the stipulated sum type.

Third.—As subcontracts are generally let at a stipulated sum and are governed by the General Conditions of the Contract, it is necessary that those Conditions should be suited for use with such subcontracts and not of a kind adapted to the cost-plus-fee system only.

Commenting on the Agreement, article by article, we note:

Article 1. The Work to be Done and the Documents Forming the Contract.

In this article all the documents forming the contract should be identified with great care and the drawings and specifications covering the work which is to be placed in charge of the Contractor, should be so clearly defined that no mistake is possible as to its scope. Work not so defined may, of course, be put in the hands of the Contractor by subsequent action or it may be let separately under Article 41 of the General Conditions of the Contract.

Since those Conditions as printed are not in all respects suited to the cost-plus-fee system, a clause making the Agreement superior to the other documents is included in Article 1.

Article 2. Changes in the Work.

When a contract is let for a stipulated sum, changes in the work involving changes in the amount of the contract have very properly to be authorized in the way set forth in Articles 24 and 25 of the General Conditions of the Contract, but when, as is often the case in a cost-plus-fee contract, the work cannot accurately be drawn and specified in advance, its very scope being perhaps unknown at the time of letting the contract, some less rigid method has to be adopted. The most workable arrangement, under such circumstances, is that of Article 2. Under it, however, very clear understandings between the Owner and the Architect are necessary as to all such changes.

If, however, a guarantee of cost (see following) is given, then Article 2 becomes subject to the provisions, as to changes in the amount of that guarantee, contained in the article relative thereto.

Article 4. The Fee for the Contractor's Services.

Under the cost-plus-fee-system, the Contractor's fee for his services may be either a fixed sum agreed on in advance or it may be a percentage upon the cost of the work as finally ascertained. Sometimes it is a certain percentage of the cost of the work done by the Contractor and a certain lower percentage upon the cost of the work sublet. In any event, the blank in Article 4 provides an opportunity for recording whatever agreement may be reached in this matter.

The advantage of the percentage method is that, on the theory that the greater the cost the greater the Contractor's service, it automatically adjusts itself to total expenditure. Its disadvantage is that it puts a premium for the Contractor on a high cost and therefore it raises a suspicion that, to swell his own remuneration, he has permitted or encouraged a high cost.

If the amount of the fee be fixed in advance, no such suspicion can arise and the Contractor can effect savings for the Owner without penalizing himself for so doing. The disadvantage of the fixed fee is that in case of any great change in the scope of the work, a readjustment of fee ought, in equity, to be made. Such contingency should be provided for in the Agreement.

Common practice has established the amount of the fee within reasonable limits. While the Owner must take it into account, the question is one of fundamental business judgment, and is not subject to a mere arithmetical comparison as between four, six or eight per cent. The services of an able, honest and well-equipped Contractor might not be overpaid at a percentage several times greater than that asked by one badly qualified. Indeed, the total cost of the work to the Owner might well be less if it were in the hands of the more highly paid Contractor. Therefore, any scheme that attempts to select the Contractor by a mere comparison of the fees asked is fallacious.

Indeed, one of the great advantages of the cost-plus-fee method lies in the ability of the Architect and Owner to select the Contractor with an eye single to that Contractor's ability to do the work. The increasing use of that method is reacting upon the building business in the now well-marked tendency to exclude the shrewd unscrupulous Contractor in spite of all his powers of imposing himself upon the Owner, in favor of men who have proved their ability in organization and administration with consequent benefit to the Owner's interests in the work of construction.

It is also possible with this system to select the Contractor well in advance of the completion of the contract drawings and specifications, and in

this way to secure his advice in advance on many matters related to the preparation of plans and the determination of materials and methods. Just as an Architect can be of service to an Owner before he has bought his land, so an experienced Contractor can be of service to Owner and Architect before ground is broken.

Article 5. Costs to be Reimbursed.

Articles 5, 6 and 7 are perhaps the most difficult parts of the Agreement to draw. They can cause or prevent more difficulties from day to day during the progress of the work than any others, for they determine the fundamental accounting procedure and if drawn wrongly may involve endless complications.

These articles as drawn are based on the assumption that the Contractor has assumed professional relations with the Owner and should be relieved of financial responsibilities inconsistent with such a relationship. The Owner is to finance the undertaking, and will pay direct all possible items of cost. Those items which the Contractor must pay, subject to reimbursement as included in Article 5, are reduced to a minimum.

The last paragraph (h) of Article 5 covers small tools, one of the most troublesome items. Some prefer to cover small tools and certain other "plant" items by a lump sum for which the Contractor is to furnish all that are needed for the work. This, however, is illogical in that it inserts a small lump-sum contract into a cost-plus-fee contract and is unsatisfactory and troublesome as it creates the necessity of determining constantly whether or not certain items fall under the lump sum or are to be paid for as part of the regular cost. It seems best to have all such small tools, as are actually used up during the work, paid for as part of the cost and any that are used, but remain of value at the end of the work, taken over by the Contractor at a fair valuation to be agreed on.

In less important forms of work, such as small repairs or alterations, it is often customary for the Contractor to furnish small tools without expense to the Owner, being covered by the general percentage or fee. Such a case may be covered by omitting (h) in Article 5 and (d) in Article 7 and inserting in the blank of Article 6 a provision such as the following:

"The Contractor further agrees to furnish all tools and construction plant necessary for the proper and expeditious performance of the contract without making any charge for their cost, use or repair."

In such a case, however, it would be wise to incorporate in the Agreement a schedule showing just what equipment or kinds of equipment are understood to be included.

Article 6. Costs Not to be Reimbursed.

The theory of a cost-plus-fee contract is that the Contractor shall be reimbursed every cost, direct or indirect, of the work forming the subject of the contract and that for his services in conducting the work he shall receive a fee that is absolutely net to him and subject to no deductions, except for negligence. Owing, however, to the difficulty of ascertaining certain items of cost, the theory is rarely applied with strictness. Therefore, the Institute's form of Agreement takes, as in Article 6, the view that certain things are to be paid for by the Contractor out of his fee.

Article 7. Costs to be Paid Direct by the Owner.

All items that can readily be paid direct by the Owner should be so paid and Article 7 is drawn with this idea in mind. Routine procedure can

and should be arranged so as to simplify the Owner's duties and leave the responsibility of the routine work on the Contractor and Architect.

Paragraph (d) covers the difficult problem of plant. Plant comes from many different sources, and under different conditions of purchase or rental. No fixed rule can be laid down. Each individual piece of equipment that is bought or rented will be necessarily the subject of a definite agreement.

In some contracts it is provided that when a certain percentage of the value of a piece of equipment has been paid in rental that the title thereto shall vest in the Owner. This is felt to be an unwise procedure and involves complications of ownership and subsequent disposition of the equipment without any real benefit to the Owner. The Contractor, as the adviser of the Owner, should notify him when it is better for him to purchase plant outright and when it is better to rent it.

In renting plant it is not easy to cover the matter of repairs. The owner of the plant should furnish and maintain the plant in workable condition, and should make good "internal" defects that may develop, the results of normal use, or "wear and tear." Minor repairs and replacements due to the accidents of use are a proper charge against the work and should be made by the person renting the plant. Provisions to this effect should form part of the rental agreements.

As noted under Article 5, the furnishing of all necessary plant for a fixed sum is undesirable.

The United States Government's form of cost-plus-fee contract for cantonments is accompanied by a schedule, which may here serve as a check-list, naming the following articles as subject to rental:

Automobiles; Adding and Listing Machines; Buckets, Tipple and Bottom Dump; Boring Machine, Pneumatic; Boring Machine, Electric; Buckets, Orangepeel, 1 yard; Buckets, Orangepeel, less than 1 yard; Buckets, Clamshell; Boiler and 3 drum machine; Boiler and 2 drum engine; Boiler and 1 drum engine; Boiler only, 30 h. p. and smaller; Boiler only, larger than 30 h. p.; Block Machine, Concrete; Cars, Skip, 1½ yards; Cars, Skip, 3 yards; Cars, Steel, 1 yard and smaller; Cars, 4 yards, Wooden; Cars, 6 yards, Wooden; Cars, 12 yards, Wooden; Cars, 1 Hopper, Radial Gate; Crushers, only; Crushers, with elevator and screen; Conveyor, gravity, per 100 feet; Compressor, 10x10 with steam engine; Compressor, 8x8 Belt Driven; Compressor, with Gasoline Engine on Wheels; Compressor, Westinghouse, 9½"; Cableways, without engine; Drill Auto Traction; Dump Wagons; Diving Outfit with pumps; Derricks, 60 feet to 85 feet; Derricks, 30 feet to 59 feet; Derricks less than 30 feet; Derricks, Breast; Derricks, Circle Swing; Elevators, Platform or Bucket; Elevators with bins for concrete; Engines, Skeleton, 3 drum; Engines, Skeleton, 2 drum; Engines, Skeleton, 1 drum; Engines, Steam, Horizontal, 11 to 40 h. p.; Engines, Steam, Upright, to 10 h. p.; Engines, Gasoline, to 8 h. p.; Engines, 2 drum with Electric Motor; Engines, Gasoline, 10 h. p.; Engines, Derrick, Swinging; Hammers, Rivetting; Hod Elevating Machine; Levelling Instruments, Engineers'; Locomotive 36 in Gauge; Locomotive Standard Gauge; Mixers with Boiler Sideloaders; Mixers, with Electric Motors, 1 yard; Mixers without Boiler, less than 1 yard; Mixers without Boiler, 1 yard and larger; Mixers with Gasoline Engine; Motoreycles; Motors, 2 h. p.; Motors, 5 h. p.; Motors, 10 h. p.; Motors, 25 h. p.; Motors, 50 h. p.; Pumps, Centrifugal, 10 inch Belt Driven; Pumps, Centrifugal, 10 inch with motor attached; Pumps, Centrifugal, 8 inch Steam Connected; Pumps,

Centrifugal, 6 inch Steam Connected; Pumps, Centrifugal, 4 inch Steam Connected; Pumps, Duplex and Triplex to 3 inch; Pumps, Pulsometer to 4 inch; Pumps, Diaphragm; Pumps, Diaphragm, with Gas Engine; Pumps, Triplex with Belt Drive; Pile Drivers, Drop; Pile Drivers, Drop with single Drum Engine and Boiler; Pile Hammers, Steam, up to 2,500 lbs.; Pile Hammers, Steam, larger than 2,500 lbs.; Rail, per ton; Roller, Horse; Steam Drills, Small Air Drills; Steam Roller; Steam Shovel; Sprinkling Cart; Saw Benches; Saw Benches with Motor or Gasoline Engine; Scale Boxes; Scraper, Wheel; Transits; Typewriter.

Article 8. Discounts, Rebates, Refunds.

Where the Contractor is required to obtain discounts, it is sometimes provided that the Owner will keep on deposit with the Contractor a stated sum for that purpose.

Article 9. Separate Contracts.

A professional adviser should not be party to a contract with a Contractor for work which he supervises. For this reason in a cost-plus-fee contract, when the Contractor is substantially the Owner's construction manager, the various minor contracts should be direct with the Owner rather than as customarily with the Contractor. The Contractor's general responsibility and directing authority will be clear, and as payments are dependent on his initial action, as provided in Article 13, there will be in effect the same financial control as if the actual payments were to be made by him.

In the selection of separate contracts the Owner, Architect and Contractor act jointly, the Owner getting the value of the advice of both his advisers.

One of the excellent features of the cost-plus-fee method is that it ensures the selection of capable subcontractors, the Owner's, Contractor's and Architect's interest in the matter all tending to this result. The method, when properly used, assists in raising the standard of the building business, because it actively discourages the unfair treatment to which subcontractors are so notoriously exposed under the method of competitive bidding.

Article 12. Accounting, Inspection, Audit.

On work of slight importance and small cost, no check is usually kept at the building upon time and materials, the Contractor's vouchers being accepted by the Architect.

On larger work, where the clerk of the works is not too much occupied by his proper duties, he may be expected to keep a certain check on materials and labor.

If, however, the Owner's interests are properly to be guarded, especially if the work is of considerable size, the Owner should employ a competent auditor versed in building matters. He need not be personally present at the work at all times, but he should have such assistance as is necessary to keep an accurate check upon all time and material to be paid for under the cost-plus-fee system.

Article 13. "Application for Payment."

Since most items of cost are paid direct under this form of agreement many of the troublesome elements connected with payments are eliminated, such as insuring proper distribution by the Contractor of moneys paid him on account of materials and subcontracts.

Practice varies considerably as to payments on account of the Contrac-

tor's fee. Sometimes no payment is made until the work is finished, when it is paid in one sum. Usually, however, payments on account are made varying from 50 to 100 per cent of the proportion of the Contractor's fee earned to the date of payment.

Article 16. Termination of Contract.

The General Conditions of the Contract, in use when a stipulated sum forms the basis of the Contractor's payment, rightly provide for a termination of the contract at the Owner's initiative only in extreme circumstances.

The procedure following such termination is necessarily different under the cost-plus-fee system from that under the stipulated sum system and for such differences Article 16 makes provision.

On a cost-plus-fee basis, termination may be more readily effected and it is sometimes agreed, as in all the U. S. Government contracts on this basis, that the Owner may terminate the contracts at will and without fault on the part of the Contractor.

In such a case, provision should be made for equitably compensating the Contractor for the expense of organizing and stopping the work and for the disorganization to his business resulting from the cancellation of the contract.

Article 17. Time of Completion of the Work.

When the time required to complete the work may be foreseen with reasonable accuracy, a date of completion may be agreed upon with liquidated damages for failure to complete the work at that date. In that case, a provision such as the following should be included in the Agreement:

"The Contractor agrees that the work set forth in the Drawings and Specifications enumerated in Article 1 hereof shall be substantially completed upon the.....day of..... 19...., subject, however, to extensions of time as provided in Article 24 of the General Conditions, and the Contractor further agrees that from the compensation, otherwise to be paid, the Owner may retain the sum of.....dollars (\$.....) for each day thereafter, Sundays and holidays included, that the work remains uncompleted, which sum is agreed upon as the proper measure of liquidated damages which the Owner will sustain per diem by the failure of the Contractor to complete the work at the time stipulated and this sum is not to be construed as in any sense a penalty."

It is important, alike under the cost-plus-fee system and under the stipulated sum system, that the amount named as liquidated damages should be reasonably in accord with the facts, for if greatly in excess, the courts may hold, as they already have held in certain cases, that such damages are in reality a penalty and therefore void.

Article 18. Competitive Bidding on a Cost-Plus-Fee Basis.

Reference is made above to the fact that it is possible to base a cost-plus-fee contract on competitive bids. An ingenious method of reaching that result and at the same time of enabling the Contractor by efficiency in the conduct of the work to increase his own profit while reducing the expense to the Owner is now in use. It may be explained by a clause from an actual contract covering the construction of an important viaduct.

"Each bidder shall state his estimated 'cost of the work,' which shall

be termed Contractor's Estimated Cost, and shall also state a fee which shall be termed Contractor's Profit Fee, which shall be separate from and not a part of the Contractor's Estimated Cost. The Contractor's Profit Fee must not exceed ten per cent of the Contractor's Estimated Cost.

"The Contractor's Estimated Cost shall be assumed to be based upon the approximate quantities hereinafter stated. Inasmuch as the actual quantities in the finished structure may vary from those approximate quantities, each bidder must also quote unit prices for each of the various construction items as given in the form of proposal and bid herewith. These unit prices shall be applied to the differences between the approximate quantities given and the actual quantities in the completed structure. The sums so obtained shall be added to or subtracted from the Contractor's Estimated Cost accordingly as the actual quantities are respectively greater or less than the corresponding approximate quantities, thus fixing an amount to be termed the Revised Contractor's Estimated Cost.

"The Contractor shall be paid the Actual Cost of the Work plus a Profit Fee. If the Actual Cost of the Work is equal to the Revised Contractor's Estimated Cost, the Contractor shall be paid the Contractor's Profit Fee in full. If the actual Cost of the Work is less than the Revised Contractor's Estimated Cost the Contractor shall be paid the Contractor's Profit Fee, and in addition thereto, one-half of the amount which the Actual Cost of the Work is less than the Revised Contractor's Estimated Cost. If the Actual Cost of the Work is more than the Revised Contractor's Estimated Cost, the Contractor will be paid the Contractor's Profit Fee less one-half of the amount which the Actual Cost of the Work is in excess of the Revised Contractor's Estimated Cost; but in no event shall the Contractor be paid less than the Actual Cost of the Work plus one-third of the Contractor's Profit Fee."

Next is defined "The Actual Cost of the Work" much as in Article 5 of the Agreement which accompanies this circular. The "Profit Fee" is then defined as follows:

"The Profit Fee paid to the Contractor shall be deemed to cover and include the Contractor's profit, the use of his organization, his skill, and energy, his overhead expenses, administrative expenses, services of Contractor's executives, expenses of Contractor's executives giving occasional attention to the work, services of the general superintendent devoting all his time to the work, all Contractor's legal expenses, interest on moneys used, taxes, all expenses of any office or offices of the Contractor other than the field office on the work, and all other expenses deemed by the Engineers not a part of the Actual Cost of Work as herein defined."

It is to be observed that the Contractor has to pay out of his "Profit Fee" much more than is required in Article 6 of the Agreement which accompanies this Circular.

In explanation of the operation of the particular contract above cited the following statement has been made:

"The Contractor, by attention to the work and efficiency in administration, may increase his profit while at the same time he reduces the expense to the Owner. On the other hand, although he is in a position where he probably will have small financial loss, he may suffer the loss of his time and attention to the work. The percentage fee to be named is limited to 10%, and the minimum fee above the Actual Cost to one-third of that amount, or not to exceed $3\frac{1}{3}\%$ of the cost of the work. It is estimated that this $3\frac{1}{3}\%$ will not more than cover the items specified as part of the Profit Fee. It is essential in such a contract to draw a very distinct line

between what is to be the Actual Cost of the Work and what is to be covered by the Profit Fee and to exclude from the Actual Cost of the Work all indefinite charges or amounts which can not readily be checked by ordinary auditing.'"

Other methods have been used by which competitive bidding may be obtained on the cost-plus-fee basis, as for instance the method employed by the U. S. Housing Corporation, in which the various bidders not only competed in the amount of their fee, but also were called upon to name their estimated total cost, their organization and the personnel available to handle the work in the field, the amount for which they would furnish the plant required for the work, and the estimated time needed for the work. A definite scale of values for the various items determined which was the low bid on the project as a whole.

NOTE ON GUARANTEE OF COST: The fundamentals of a cost-plus-fee contract make illogical any guarantee of cost. If an owner has a limited amount to spend which cannot be exceeded he should adopt the lump-sum type of contract. A cost-plus-fee contract with a guaranteed limit is an attempt to secure for the owner the benefit that may accrue through the chance of a saving in cost and to put upon the Contractor the burden if the cost runs over. Such a contract has all the complications of a cost-plus-fee contract, with the attitude of mind of the Contractor as in a lump-sum contract. It involves, therefore, the undesirable elements of both forms with the advantages of neither.

A. I. A. Document, No. 177.

PROFESSIONAL PRACTICE OF ARCHITECTS

Art. VI of the Constitution of the American Institute of Architects is as follows: The Institute shall from time to time adopt a Code or Codes, which shall be standards of professional practice, and it may from time to time recommend a Schedule of Professional Charges, complying with good practice and custom, but such a Schedule shall not be made mandatory.

1. The Architect's professional services consist of the necessary conferences, the preparation of preliminary studies, working drawings, specifications, large scale and full size detail drawings; the drafting of forms of proposals and contracts; the issuance of certificates of payment; the keeping of accounts, the general administration of the business and supervision of the work, for which, except as hereinafter mentioned, a proper minimum charge, based upon the total cost of the work complete, is six per cent.

2. On residential work, alterations to existing buildings, monuments, furniture, decorative and cabinet work and landscape architecture, it is proper to make a higher charge than above indicated.

3. The Architect is entitled to compensation for articles purchased under his direction, even though not designed by him.

4. Where the Architect is not otherwise retained, consultation fees for professional advice are to be paid in proportion to the importance of the question involved and services rendered.

5. The Architect is to be reimbursed the costs of transportation and living incurred by him and his assistants while traveling in discharge of duties connected with the work, and the costs of the services of heating, ventilating, mechanical, and electrical engineers.

6. The rate of percentage arising from Articles 1 and 2 hereof, *i. e.*, the basic rate, applies when all of the work is let under one contract. Should the Owner determine to have certain portions of the work executed under separate contracts, as the Architect's burden of service, expense and responsibility is thereby increased, the rate in connection with such portions of the work is greater (usually by four per cent) than the basic rate. Should the Owner determine to have substantially the entire work executed under separate contracts, then such higher rate applies to the entire work. In any event, however, the basic rate, without increase, applies to contracts for any portions of the work on which the Owner reimburses the engineer's fees to the Architect.

7. If, after a definite scheme has been approved the Owner makes a decision which, for its proper execution, involves extra services and expense for changes in or additions to the drawings, specifications or other documents; or if a contract be let by cost of labor and materials plus a percentage or fixed sum; or if the Architect be put to labor or expense by delays caused by the Owner or a contractor, or by the delinquency or insolvency of either, or as a result of damage by fire or other casualty, he is to be equitably paid for such extra service and expense.

8. Should the execution of any work designed or specified by the Architect or any part of such work be abandoned or suspended, the Archi-

test is to be paid in accordance with or in proportion to the terms of Article 9 of this Schedule for the service rendered, up to the time of such abandonment or suspension.

9. Whether the work be executed or whether its execution be suspended or abandoned in part or whole, payments to the Architect on his fee are subject to the provisions of Article 7 and 8, made as follows:

Upon completion of the preliminary studies, a sum equal to twenty per cent of the basic rate computed upon a reasonable estimated cost.

Upon completion of specifications and general working drawings (exclusive of details) a sum sufficient to increase payments on the fee to sixty per cent of the rate or rates of commission agreed upon, as influenced by Article 6, computed upon a reasonable cost estimated on such completed specifications and drawings, or if bids have been received, then computed upon the lowest bona fide bid or bids.

During the preparation of the preliminary studies and of the specifications and general working drawings, it is proper that payments on account be made at monthly or other intervals, in proportion to the progress of the architect's service, and so as to aggregate in each period not more than the sums prescribed above.

From time to time during the execution of work and in proportion to the amount of service rendered by the Architect, payments are made until the aggregate of all payments made on account of the fee under this Article reaches a sum equal to the rate or rates of commission agreed upon as influenced by Article 6, computed upon the final cost of the work.

Payments to the Architect, other than those on his fee, fall due from time to time as his work is done or as costs are incurred.

No deduction is made from the Architect's fee on account of the use of old materials, penalty, liquidated damages or other sums withheld from payments to contractors.

10. The Owner is to furnish the Architect with a complete and accurate survey of the building site, giving the grades and lines of streets, pavements and adjoining properties; the rights, restrictions, easements, boundaries and contours of the building site, and full information as to sewer, water, gas and electrical service. The Owner is to pay for borings or test pits and for chemical, mechanical or other tests, when required.

11. The Architect endeavors to guard the Owner against defects and deficiencies in the work of contractors, but does not guarantee the performance of their contracts. The supervision of an architect is to be distinguished from the continuous personal superintendence to be obtained by the employment of a clerk of the works.

When authorized by the Owner, a clerk of the works, acceptable to both Owner and Architect, is to be engaged by the Architect at a salary satisfactory to the Owner and paid by the Owner, upon presentation of the Architect's monthly certificates.

12. When requested to do so, the Architect makes or procures preliminary estimates on the cost of the work and he endeavors to keep the actual cost of the work as low as may be consistent with the purpose of the building and with proper workmanship and material, but no such estimate can be regarded as other than an approximation.

13. Drawings and specifications, as instruments of service, are the property of the Architect, whether the work for which they are made be executed or not.

The words "the cost of the work," as used in Articles 1 and 9 hereof, are ordinarily to be interpreted as meaning the total of the contract sums incurred for the execution of the work, not including Architect's and Engineer's fees or the salary of the clerk of the works, but in certain rare cases, *e. g.*, when labor or material is furnished by the Owner below its market cost or when old materials are re-used, the cost of the work is to be interpreted as the cost of all materials and labor necessary to complete the work, as such cost would have been if all materials had been new and if all labor had been fully paid at market prices current when the work was ordered, plus contractor's profits and expenses.

As adopted at the Washington Convention, December 15-17, 1908; and revised in form at the 50th Convention, December 6-8, 1916, at the 54th Convention, May 11-13, 1921, and at the 55th Convention, June 7-9, 1922.

CHARGE SCHEDULE—NEW YORK CHAPTER OF AMERICAN INSTITUTE OF ARCHITECTS

The New York Chapter of the American Institute of Architects as a professional body, recognizing that the value of an Architect's services varies with his experience, ability, and the locality and character of the work upon which he is employed, does not establish a rate of compensation binding upon its members, but it is the judgment of the New York Chapter that for full professional services adequately rendered, an architect practicing in the City of New York should receive as reasonable remuneration therefor at least the compensation mentioned in the following schedule of charges:

1. The Architect's professional services consist of the necessary conferences, the preparation of preliminary studies, working drawings, specifications, large scale and full size detail drawings, and of the general direction and supervision of the work, for which, except as hereinafter mentioned, the minimum charge, based upon the total cost* of the work complete is 6 per cent.

2. On residential work, on alterations to existing buildings, on monuments, furniture, decorative and cabinet work and landscape architecture, it is proper to make a higher charge than above indicated, as follows:

For city houses, on the first \$50,000 of cost 8 per cent.

And on the balance of cost the minimum fee of..... 6 per cent.

For country houses, and stables and other dependencies,

On the first \$50,000 of cost of each building 10 per cent.

And on the balance of cost of each building 8 per cent.

For alterations to existing buildings 10 per cent.

For designs for fabrics, furniture and fittings, lighting fixtures, hardware and decorations 15 per cent.

For monumental, special interior and landscape work 10 per cent.

By special interior work is meant that part of the work which is individual requiring special study and drawings for each room, or each feature thereof, as distinguished from the work which is repetitious and which can be executed from typical drawings and general specifications.

All of the above charges are subject to increase by special arrangement, where the cost of the work is small or the conditions unusually difficult.

3. The architect is entitled to compensation for articles purchased under his direction, even though not designed by him.

4. If an operation is conducted under separate contracts, rather than under a general contract, it is proper to charge a special fee in addition to the charges mentioned elsewhere in this schedule, which fee should be not less than 50% of these charges when the whole work is so divided. When only parts of the work are let under separate contracts the additional fee should be according to the services rendered.

5. Where the architect is not otherwise retained, consultation fees for professional advice are to be paid in proportion to the importance of the questions involved and services rendered.

6. Where heating, ventilating, mechanical, structural, electrical and sani-

* The total cost is to be interpreted as the cost of all materials and labor necessary to complete the work, plus contractors' profits and expenses, as such cost would be if all materials were new and all labor fully paid, at market prices current when the work was ordered.

tary problems are of such a nature as to require the services of a specialist, the owner is to pay for such services. Chemical and mechanical tests and surveys, when required, are to be paid for by the owner.

7. Necessary travelling expenses are to be paid by the owner, as well as the cost of prints, models and other special disbursements on his account.

8. If, after a definite scheme has been approved, changes in drawings, specifications or other documents are required by the owner; or if the architect be put to extra labor or expense by the delinquency or insolvency of a contractor, the architect shall be paid for such additional services and expense.

9. Payments to the architect are due as his work progresses in the following order: Upon the completion of the preliminary studies, one-fifth of the entire fee; upon completion of specifications and general working drawings (exclusive of details), two-fifths additional, the remainder being due from time to time in proportion to the amount of service rendered. Until an actual estimate is received, charges are based upon the proposed cost of the work and payments received are on account of the entire fee.

10. In case of the abandonment or suspension of the work, the basis of settlement is to be as follows: For preliminary studies, a fee in accordance with the character and magnitude of the work; for preliminary studies, specifications and general working drawings (exclusive of details), three-fifths of the fee for complete services.

11. The supervision of an architect (as distinguished from the continuous personal superintendence which may be secured by the employment of a clerk-of-the-works or superintendent of construction) means such inspection by the architect or his deputy, of work in studios and shops or a building or other work in process of erection, completion or alteration, as he finds necessary to ascertain whether it is being executed in general conformity with his drawings and specifications or directions. He has authority to reject any part of the work which does not so conform and to order its removal and reconstruction. He has authority to act in emergencies that may arise in the course of construction, to order necessary changes, and to define the intent and meaning of the drawings and specifications. On operations where a clerk-of-the-works or superintendent of construction is required, the architect shall employ such assistance at the owner's expense. While the architect will endeavor at all times to guard the owner against defects and deficiencies in the work of the contractor, he does not guarantee the performance of the contract by the Contractor, or insure the client against defective work thereunder.

12. Drawings and specifications, as instruments of service, are the property of the architect, whether the work for which they were made be executed or not.

Adopted January 14, 1914.

GENERAL INDEX

ACCEPTANCE

of bid must be definite and unconditional	64
of offer necessary to complete contract	63-64
of plans, as affecting compensation of architect	88
of plans as distinguished from delivery	87-88
withdrawal of bid, after	65-66

ADDITIONAL

sets of plans, payment for	83-84
sets of sketches, payment for	81-83

AGENCY

architect must act strictly within the terms of his	154-156
authority to supervise erection of building does not give architect right to act for owner in other particulars.....	153-154
of architect, dangers of	153-156
cautions with respect to	153-156
should be specific rather than implied	153

AGREEMENT

supplemental, should be in writing	66-69
--	-------

ALLOWANCE

by dealer to architect on purchase of materials.....	44
--	----

AMBIGUITY

with respect to cost estimates by architect to be avoided	73
---	----

A. I. A.

minimum charge schedule of, as affecting recovery of architect's fee in excess thereof	84-86
schedule of charges of, as proof of value of services.....	42
standard form of building contract of.....	50-63

ARBITRATION

New York law for.....	57
advantages and disadvantages of.....	55-59, 61-62

ARCHITECT

acceptance of bid as fixing basis for computation of fee of	81
acceptance of fee in stock, as affecting income tax liability of.....	47-49
acceptance of plans as affecting compensation of	88
acceptance of stock as part of commission of	46-49
acceptance of trade allowance by	44
agency of, cautions with respect to the	153-156
all terms affecting compensation of, should be fixed by contract...	80
approval and consent of owner necessary to enforcement of lien by.....	145-148
approval by implication	146-148
specific approval	146-148
as arbitrator	128-129
assumption of reasonable skill and care on part of	105-106
authority to supervise erection of building does not give right to act for owner in other particulars	153-154
bad faith on part of, as affecting validity of his decisions	56

can not charge for changes in plans made necessary by his mistakes	91
cautions to be observed by,	
in general	162-168
on entering into contract with state and federal governments	136-142
with respect to competitions	131-134
with respect to dealings with corporations	135-138
centralization of authority in	45, 53-59
checking of quantities and prices by	117-121
compensation of,	
for extra work	88-100
for plans	88-97
for sketches	81-83
for work of special character	97-100
should be fixed by contract	80
contract for employment of, not assignable by architect	157
contract provisions covering compensation of, for preliminary sketches	80-83
contract of, with client, is basis of their relationship	27
dangers of lack of care in issuance of certificates by	117-124
dangers incident to the agency of the	153-156
dealings of, with municipal corporations	136-140
dealings of, with state and federal governments	136-142
delegation of authority by	111-115
delivery of plans, a condition precedent to recovery by	86-88
directions by client, without consultation with	124-127
disadvantage of curtailment of authority of	54-56
employment of, a contract of personal employment	157
client can dispense with services of, subject to rights of architect to damages	157
employment of, similar to employment of lawyer	157
entitled to mechanics lien	143
guarantee of cost by	70-71
has not the title to plans, in absence of agreement	101
implied guarantee of cost by	70-71
implied representation by, that he is capable of securing desired result	106
importance of centralization of authority in	45
importance of specific, rather than implied, agency of	153-156
interest of contractor in employment of	157-160
interest of, in contract between owner and contractor	50
issuance of certificate by, as condition precedent to recovery by contractor	121-124
issuance of certificates by	117-124
laws with respect to registration of	150-151
"Legal Don'ts" for the	162-168
liability of, to public for consent to improper changes	94-97
liability of, to sub-contractors, where architect acts for undisclosed principal	77-79
must, above all, be definite	168
must act strictly within limits of his authority as agent	154-156
must be fair to contractor	123, 128-129, 160
must exercise care in dealing with federal, state or municipal government	134, 136-142
must have no collusion with owner	123
must not have concealed interest in building operation	129
necessity of supervision by, to entitle him to mechanic's lien	143-144
negligence in issuance of certificates by	120-121
not called upon to give constant personal supervision	108-115
ordinarily should not employ clerk of the works	107
over-certification by	120

precautions to be taken by, where client insists on improper construction	94-97
proof of reasonable value of services of	42-43
protection of, when acting as arbitrator	128-130
provision in contract between owner and contractor not conclusive with respect to title of plans in	102
quasi judicial capacity of	128-129
ratification of employment of	41
registration of, advantages of	150
a recent development	150
relations of landscape architect or decorator with	44-45
relationship with client similar to that of lawyer with client	82, 105-106, 127, 157
representations by, with respect to cost	70-71
right of, on recommencement of work, after its suspension	160-161
to commission on furnishings, decorating and landscape work	43-44
to commission on lighting fixtures	44
to compensation for changes in plans	88-97
to compensation for extra work as distinguished from amount accruing on basic charge	92-94
to compensation for successive sets of sketches	81-83
to compensation for successive sets of working drawings and plans	83-84
to compensation for work done irrespective of use of plans by client	82-83
to fee as affected by inaccurate estimate of cost	70-73
to include cost of land in computing fee	39-42
should exercise care in entering competitions	131-134
should exercise care in filing of mechanic's lien	149
should make clear to client fact there will be extras	73
make clear to client impossibility of exact estimates	73
not assume obligations as contractor or principal	75-79
not assume responsibility for contract between client and contractor	155-156
not guarantee cost figures	70-74
not make cost representations	70-74
standard contract provision with respect to estimates of	71-72
supervision by	105-130
termination of employment of	157-161
when compensation of, depends on acceptance of plans	88
where rates of, are higher than minimum charges of A. I. A., contract should clearly so provide	84-86

ARCHITECTURE

the business side of	17-26
----------------------------	-------

AUTHORITY

centralization of, in architect	45, 53-59
delegation of, by architect	111-115

AUTHORIZATION

of extras by architect, danger of	115-117
---	---------

BID

acceptance of, as fixing basis for computation of architect's fee ..	81
contract provisions with respect to, as affecting contractor and owner	59-60
mistake, as affecting acceptance of	65
withdrawal of	63-65

246 THE ARCHITECT'S LAW MANUAL

BUILDING CONTRACT

- A. I. A. standard form of 50-63
- advantages of specially prepared forms of 62

BUSINESS

- side of architecture 17-26

CERTIFICATES

- issuance of by architect 117-124
- issuance of, as condition precedent to recovery by contractor 121-124

CENTRALIZATION

- of authority important 45, 53-59

CHANGES

- effect on architect of demand by client for improper 94-97
- in plans, compensation of architect for, should be covered by contract 89
- in plans, proper contract provision covering 90
- in plans, right of architect to compensation for 88-97
- in sketches, compensation of architect for 81-83

CLERK

- of the works should ordinarily be employed by client 107

CLIENT

- architect should not assume responsibility for contract between contractor and 155-156
- contract is basis of relationship between architect and 27
- directions by, without consultation with architect 124-127
- insistence of, on details of construction 94-97
- payment by, for improper changes, demanded by him 94-97
- should understand there will be extras 73
- should ordinarily pay clerk of the works, where one is employed.... 107
- must have no collusion with architect 123, 129
- waiver of delivery of plans by 86

COLLATERAL

- agreement as varying written agreement 66

COLLUSION

- between client and architect improper 123, 129

COMPENSATION, see also *Architect*

- of architect
 - acceptance of stock as part of 46-49
 - as affected by ratification of employment 41
 - custom as affecting 42-43
 - effect of inaccurate estimate of cost on 70-73
 - for extra work 91-100
 - as distinguished from additional basic rate commission on extra work 92-94
 - knowledge by client of architect's charges as affecting 42-43
 - on furnishings, decorating and landscape work 43-44
 - on lighting fixtures 44
 - payment of, in stock, as affected by income tax law 47-49
 - proof of reasonable value in fixing of services 42-43
 - right to include cost of land in computing 39-42
 - should be fixed by contract 80
 - when dependent on acceptance of plans 88

COMPETITIONS

- are not usually based on formal contract 131
- cautions with respect to architect engaging in 131-134
- conditions under which they are held should be carefully considered 131

COMPONENT PARTS

submission on estimate, of cost of 60

CONCEALED

interest in building operation on part of architect 129

CONDITION

stipulation of new, as affecting acceptance of bid 64

CONSTRUCTION CONTRACT, see *Building Contract*

CONTRACT

adaptation of forms of to architect's practice 36
 advantage of written over implied 38-39
 A. I. A. standard form of building 50-63
 A. I. A. standard form of, between architect and client 31-35
 best results by preparation of special form of 35
 between architect and client should cover changes in plans 89
 between owner and contractor 50-69
 by implication 37-38
 desirability and practicality of 27
 forms of 28-49
 intermediate form of 28-30
 is basis of relationship between architect and client 27
 long form of 28-29
 limitations on right of contractor to terminate work on change of
 architects 158-160
 method of using 30
 provision covering changes in plans 90
 provision for termination of, on difficulties with unions 68
 provisions with respect to bids 59-60
 provisions with respect to cost representations and guarantees 70-74
 short form of 28-29
 should cover all terms relating to architect's compensation 80
 should fix amount of architect's compensation 80
 should provide for compensation of architect for changes in plans.. 89
 should provide measure of fee to be paid for preliminary sketches.. 81
 specific performance of 64-65
 submission of charge schedule as basis of 36
 the proper provision of, for protection of architect on estimates... 74
 with state, municipal and federal governments 136-142

CONTRACTOR

architect must observe good faith in dealings with 123, 128-129, 160
 architect should avoid assuming obligation as 75-79
 architect should not assume responsibility for contract between
 client and 155-156
 failure to produce certificate as affecting recovery by 121-124
 component part bid by 117-120
 contract provisions with respect to bids, as affecting 59-60
 right of, to discontinue work on change of architects 158-160
 right of, to act in emergencies 57-58

COPYRIGHT

protection of plans by 103

CORPORATIONS

act through their boards of directors 135
 architect must exercise care in dealing with 135-138
 architect should secure proof of authority of officers acting for... 135-136
 dealings of architect with municipal 136-140

248 THE ARCHITECT'S LAW MANUAL

practice of architecture by	151-152
what constitutes doing business by, in other states	152
COST	
guarantee or representations by architect with respect to	70-74
implied guarantee, of by architect	70-71
of work, meaning of phrase	39
CREDIT	
to owner for savings by changes	59
CUSTOM	
as affecting value of services	42-43
DANGERS	
of architect acting for undisclosed principal	75-79
DECORATING	
work, right to commission on	43-44
DECORATOR	
relations of architect with	44-45
contract between architect and	44-45
DELEGATION	
of authority by architect	112-115
DELIVERY	
and acceptance of plans, the distinction between	87-88
of plans,	
a condition precedent to architect's right to recover	86-88
waiver of	86
DEFINITENESS	
importance of	20-26, 168
DESIGN PATENTS	
	104
DIRECTIONS	
by client, without consultation with architect	124-127
DOING BUSINESS	
corporations, in foreign states	152
"DON'TS" for architects	162-168
EMERGENCIES, right of contractor to act in	
	57-58
EMPLOYMENT of architect similar to that of lawyer, 82, 105-106, 127, 157	
ESTIMATE, component part	
	60
ESTIMATED	
cost as basis for architect's fee for preliminary sketches	81
ESTIMATES	
architect should make clear to client impossibility of exact	73
should not be guaranteed by architect	70-74
EXTRA work	
compensation of architect for	91-100
EXTRAS	
authorization of by architect, danger of	115-116
client should understand there will probably be	73
FEE	
of architect, see <i>Architect</i>	
FIRM OFFER	
as distinguished from ordinary bid	64

FULL-PAID	
stock, meaning of	46-47
FURNISHINGS	
right to commission on	43
GENERAL CONDITIONS	
of A. I. A. form of building contract	51-63
GOVERNMENT	
dealings of architect with state and federal	134, 136-142
GUARANTEE	
of cost by architect, danger of	70-74
IMPLIED	
contract	37-38
guarantee of cost, by architect	70-71
INCOME TAX	
laws as affecting acceptance of stock for commission	47-49
INSTALMENT	
payment, withholding of, on account of liens	60
INTERMEDIATE	
form of contract	28-30
LAND	
fee not ordinarily chargeable on cost of	39-42
LANDSCAPE	
architect,	
relations and contract of, with architect	44-45
work, right to commission on	43-44
“LEGAL Don'ts”	
for architects	162-168
LETTERS	
necessity for care in preparation of	23-26
thoughtless writing of	23-26
LIEN, see <i>Mechanic's Lien</i>	
LIGHTING Fixtures	
right to commission on	44
LIMITATIONS	
on architect's authority inadvisable	54-56
LIQUIDATED	
damage clause must not constitute a penalty	155-156
MECHANIC'S Lien	
a statutory remedy	148-149
architect entitled to	143
approval by owner necessary to entitle architect to	145-146
approval by implication	146-147
importance of direct approval	146-148
by architect for alterations for tenant of office building	144-145
protection of owner against	60
necessity of supervision to entitle architect to	143-144
technicality of lien procedure	148-149
MEETING	
of the minds, for a valid contract there must be a	63
MUNICIPAL Corporations	
dealings of architect with	136-137

250 THE ARCHITECT'S LAW MANUAL

MUTUALITY	
meaning of	63
contract must have	63
NEGLIGENCE	
of architect in issuance of certificates	120-121
NEW YORK	
the arbitration law of	57
NON-ASSESSABLE	
stock, meaning of	47
OFFER	
firm, as distinguished from ordinary bids	64
form of acceptance of	64
not accepted can not constitute contract	63-64
OFFICE BUILDING	
mechanic's lien by architect for work for tenant of	144-145
ORAL TESTIMONY	
not admissible to vary written agreement	38-39, 66-68
OWNER, see also <i>Client</i>	
and contractor, agreement between, as affecting architect's title to plans	53
contract provisions with respect to bids, as affecting	59-60
entitled to credit for savings on changes	59
provision for termination of contract by, on difficulty with unions	68
right of, to compel performance of work by bidder	64-65
OWNERSHIP OF PLANS	
agreement between owner and contractor not sufficient to protect architect in	53
by architect should be covered by agreement between architect and client	53
PATENTS	
protection of plans by	103
design	104
PAYMENT	
instalment, withholding on account of liens	60
PENALTY	
as distinguished from liquidated damages	155-156
PERFORMANCE	
of work by bidder, right of owner to compel	64-65
specific, of contract	64-65
PLANS	
acceptance and delivery of, distinguished	87-88
acceptance of, as affecting compensation of architect	88
changes in, made necessary by inaccuracies of architect, not sub- ject of charge	91
compensation of architect for changes in	88-97
copyright and patent protection of	103-104
delivery of, condition precedent to right of recovery by architect	86-88
general misconception as to title to, in absence of agreement	101
in absence of agreement, client has title to	101-102
ownership of, effect of agreement between owner and contractor as to	53
payment for successive sets of	83-84
rights of third parties in	102-104

PRELIMINARY SKETCHES

Compensation of architect for successive sets of	81-83
computation of fee for, on estimated cost	81
contract should provide measure of fee to be paid for	81
proper contract provisions covering payment for	80-83

PRICES

and quantities, checking of by architect	117-121
--	---------

PRINCIPAL

architect should avoid becoming involved as	75-79
architect should not act for undisclosed	76-79

PUBLICATION

of plans, what constitutes	103
----------------------------------	-----

QUANTITIES

and prices, checking of by architect	117-121
--	---------

QUANTUM MERUIT

proof of	42-43
the doctrine of	38

RATIFICATION

of architect's employment	41
---------------------------------	----

REASONABLE

skill and care by architect required	105-106
value of services	38-39
proof of	42-43

REGISTRATION OF ARCHITECTS

laws with respect to	150-151
a recent development	150
advantages of	150
as affecting corporations practicing architecture	151-152

REPRESENTATIONS

by architect with respect to cost, danger of	70-74
--	-------

SCHEDULE

of charges of architect as basis of contract	36
of charges of American Institute of Architects as proof of value of services	42
of charges of American Institute of Architects as affecting compensation of architect charging a higher rate	84-86

SHORT FORM CONTRACT

SKETCHES, see *Preliminary Sketches*

SPECIAL

designs, protection of, by design patents	104
form of construction contract, advantages of	62
forms of contract between architect and client	28-31
advantages of	35
work, compensation of architect for	97-100

SPECIFIC PERFORMANCE

of contracts	64-65
--------------------	-------

STANDARD

form of construction contract of American Institute of Architects	50-63
preferable to forms prepared without expert advice	62
form of contract between architect and client	31-35
danger of provision with respect to architect's estimates in	72

STIPULATION of new condition by bidder as affecting acceptance 64

STOCK

- acceptance of by architect, as part of commission..... 46-49
- meaning of "full-paid," "non-assessable," and "treasury"..... 46-47

STUDIES, see "Preliminary Sketches"

SUB-CONTRACTORS

- claims by, against architect acting for undisclosed principal 77-79

SUPERVISION

- and superintendence, distinction between 105-107
- by the architect 105-130
- by architect, authority to authorize extras, danger of 115-116
- definition of 106-107
- delegation of authority with respect to 112-115
- does not imply constant personal attention 108-112

SUPPLEMENT AGREEMENT

- should be in writing 66-69

SUSPENSION

- rights of architect on completion of work after its 160-161

TERMINATION

- of architect's employment 157-161
- of contract, provision for, on difficulty with unions 68

THIRD PARTIES

- rights of, in plans 102-104

TITLE TO PLANS

- in absence of contract, general misconception with respect to..... 101

TOTAL COST

- of work, meaning of phrase 39

"TREASURY STOCK"

- meaning of 46-47

UNDISCLOSED PRINCIPAL

- architect should not act for 76-79
- liability of architect to sub-contractors where architect acts for, 77-79

UNIONS

- provision for termination of contract, on difficulty with 68

VALUE

- of services 38-39
- proof of 42-43

VARIANCE

- of written agreement by oral testimony not admissible 38-39, 66-68

WAIVER

- of delivery of plans, by client 86

WITHDRAWAL OF BID

- 63-65

WITHHOLDING

- of instalment payment on account of liens 60

WORK

- "total cost" of, meaning of phrase 39

WORKING DRAWINGS

- payment for successive sets of 83-84

WRITTEN AGREEMENT

- can not be varied by parol evidence 38-39, 66-68
- variance of, by collateral agreement 66

INDEX TO FORMS

SPECIAL FORMS:

AGREEMENTS between architects:	
copartnership	182
as general associates but not as partners	183
as associates on a particular job	184
between architect and landscape architect	185

AGREEMENTS between architect and client:	
long form	171-175
intermediate form	175-177
short form	178
cost plus fee form	186-187
where architect acts as consulting architect only	179-181

STANDARD DOCUMENTS AND FORMS OF THE AMERICAN INSTITUTE OF ARCHITECTS:

ACCEPTANCE of proposal and conditions	215-216
---	---------

AGREEMENT between contractor and subcontractor	212-214
--	---------

AGREEMENTS between owner and architect	
on ordinary fee basis	188-192
on fee-plus-cost basis	192-195

AGREEMENTS between owner and contractor	
on ordinary fixed price basis	196-209
on cost-plus-fee basis	223-227

BOND	210-211
------------	---------

CIRCULAR of information on cost-plus contracts	228-236
--	---------

CONSTRUCTION of the standard documents and notes on the building contract and general conditions thereof	217-220
--	---------

INVITATION to submit a proposal	220
---------------------------------------	-----

NOTES:	
on the bond of suretyship	220
on invitation to bidders and form of proposal	220

PROPOSAL and suggestions for use thereof	221-222
--	---------

RULES OF PRACTICE AND SCHEDULES OF MINIMUM CHARGES OF THE AMERICAN INSTITUTE OF ARCHITECTS AND OF THE NEW YORK CHAPTER OF THE INSTITUTE:

RULES of professional practice and schedule of minimum charges of the American Institute of Architects	237-239
--	---------

RULES of professional practice and schedule of minimum charges of the New York Chapter of the American Institute of Architects, 240-241	
---	--

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